

PROPOSED RESOLUTION

Resolution W-4965
DWA/RSK/BMD/JP5/MDC/jp4

Agenda ID #12512 Rev. 1
Item #8 11/25/13
4:30 pm

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION W-4965
December 5, 2013

RESOLUTION

(RES. W-4965), GREAT OAKS WATER COMPANY. ORDER AUTHORIZING ESTABLISHMENT OF A MEMORANDUM ACCOUNT FOR CHROMIUM-6 COMPLIANCE COSTS.

By Advice Letter No. 233-W Filed On September 3, 2013

SUMMARY

By Advice Letter 233-W, filed on September 3, 2013, Great Oaks Water Company (Great Oaks) seeks Commission authority to establish a California Department of Public Health (CDPH) Hexavalent Chromium (Chromium-6) Compliance Memorandum Account (Chromium-6 Memorandum Account). Great Oaks requests an effective date of September 3, 2013, for the Chromium-6 Memorandum Account. The purpose of the Chromium-6 Memorandum Account is to track the costs of complying with the final drinking water standard or maximum contaminant level (MCL) for Chromium-6 that will be established by CDPH. CDPH's Press Release and Initial Statement of Reasons for the proposed drinking water standard released on August 22, 2013, indicates the initial comment period ended on October 11, 2013. A final drinking water standard for Chromium-6 is expected to be issued in 2014.

This Resolution authorizes Great Oaks to establish an amended Chromium-6 Memorandum Account consistent with the Preliminary Statement attached to this Resolution as Appendix A. The effective date for the Chromium-6 Memorandum Account is set contemporaneous with the date when the final drinking water standard for Chromium-6 is adopted. The Chromium-6 Memorandum Account shall record all reasonable costs incurred after this date for compliance with the final drinking water standard for Chromium-6 that have not been authorized for recovery in rates elsewhere.

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BACKGROUND

Great Oaks previously requested in Application (A.) 12-07-005, its last general rate case (GRC), authorization to establish a memorandum account for Chromium-6. The purpose of Great Oaks' request was to track potential compliance costs related to the treatment or reduction of Chromium-6 if and when state or federal regulations for treatment levels are established.

The Commission's Office of Ratepayer Advocates (ORA)¹ opposed the requested memorandum account for the following reasons:

1. The full extent of natural reoccurrence of Chromium-6 is not well known;
2. Estimated costs to provide for this contingency is nearly impossible at this time; and
3. Such costs are speculative at this time.

Decision (D.) 13-05-020 recorded that Great Oaks accepted ORA's recommendation and withdrew its request to establish a memorandum account for Chromium-6 compliance.

In Advice Letter 233-W, Great Oaks again requests authorization to establish a memorandum account for Chromium-6 compliance costs. Great Oaks requests an effective date of September 3, 2013 for the Chromium-6 Memorandum Account. Advice Letter 233-W was filed as a Tier 2 filing under General Order 96-B, Water Industry Rule 7.3.2(6).

In accordance with General Order 96-B, General Rule 7.6.1, the establishment of a memorandum account that has not previously been authorized by statute or by Commission order is not a "ministerial" act subject to staff disposition. At this time, there is no statute or Commission order requiring or authorizing the establishment of a memorandum account for compliance costs associated with an adopted Chromium-6 drinking water standard.

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.

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Therefore, although Advice Letter 233-W was properly filed in Tier 2, disposition of Great Oaks' request must be by Commission resolution as provided for in General Order 96-B, General Rule 7.6.2. Thus, on September 17, 2013, DWA notified Great Oaks of a 120-day suspension of Advice Letter 233-W, as the filing requires a resolution by the Commission.

Advice Letter 233-W enumerates the four criteria the Commission has used in determining that memorandum accounts are appropriate, citing to D.02-08-054 and the Division of Water and Audits Standard Practice U-27-W:

1. The expense is caused by an event of an exceptional nature that is not under the utility's control;
2. The expense cannot have been reasonably foreseen in the utility's last GRC and will occur before the utility's next scheduled rate case;
3. The expense is of a substantial nature in the amount of money involved; and
4. The ratepayers will benefit by the memorandum account treatment.

Great Oaks references the CDPH's announcement initiating the process toward final establishment of a drinking water standard for Chromium-6 as an event of an exceptional nature. Great Oaks' justification for its request is based on CDPH's statement: "California is the first and only state in the nation to establish a maximum contaminant level specifically for Chromium-6 in drinking water." Great Oaks also states in its advice letter filing that CDPH's announcement began a comment period on the proposed regulation that ended on October 11, 2013. According to Great Oaks, following the comment period, a final drinking water standard will be adopted by CDPH. At that time a compliance period will be established for all water service providers, including Great Oaks, to comply with the new drinking water standard for Chromium-6.

Great Oaks argues that establishing a memo account is justified since the expenses could not have been reasonably foreseen in its last GRC and, given CDPH's August 22, 2013 proposed drinking water standard for Chromium-6, a final drinking water standard may be adopted before Great Oaks' next GRC scheduled for a decision by July 1, 2016.

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Finally, Great Oaks justifies the need for the Chromium-6 Memorandum Account as the amount of money required for compliance to a final drinking water standard may be substantial. Great Oaks cites to industry average cost estimates in CDPH's August 22, 2013 proposed drinking water standard for the substantial nature of Chromium-6 compliance costs.

CDPH released the Initial Statement of Reason containing its proposed draft drinking water standard for Chromium-6 at 10 parts per billion (ppb) on August 22, 2013. The initial comment period for CDPH's proposed drinking water standard ended October 11, 2013. CDPH estimates that the process for adopting a final Chromium-6 MCL will likely conclude sometime in 2014 if there are no interruptions in the schedule.

The CDPH's published well data from 2001-2002 for Chromium-6 levels shows that Great Oaks had 17 wells with detected levels of Chromium-6 and one well (Well 07 Monterey Road) that exceeded the proposed drinking water standard at 11 ppb (November 2001) and 11.4 ppb (June 2002).

NOTICE AND PROTESTS

Advice Letter 233-W was filed on September 3, 2013, as a Tier 2 filing and served in accordance with General Order 96-B on adjacent utilities and persons on Great Oaks' advice letter service list.

On September 23, 2013, ORA filed a protest to Advice Letter 233-W. ORA argues that Great Oaks' request does not meet the Commission's criteria 3 and 4 guidelines for establishing a memorandum account. ORA objects that Great Oaks' request is premature as it is based only on CDPH's issuance of a draft regulation for comment.

ORA argues that Great Oaks fails to support that the potential compliance cost is of a substantial nature. ORA states that Great Oaks did not include in Advice Letter 233-W information regarding the number of contaminated wells, Chromium-6 levels, number of monitoring sites, frequency of monitoring and the type of technology the company is considering. ORA considers this information essential to establish the cost of compliance. ORA contends that Great Oaks'

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request to set up a memorandum account at this time does not serve the best interest of its ratepayers. ORA requests that Great Oaks should only be allowed to establish a memo account when the *final* drinking water standard for Chromium-6 is adopted and Great Oaks can demonstrate that the cost of compliance is substantial.

On September 24, 2013, Great Oaks filed a reply to ORA's protest. Great Oaks re-iterates that compliance cost with the final Chromium-6 drinking water standard based on CDPH's estimates for treating one well that has Chromium-6 levels above 10 ppb would exceed 20% of its last authorized revenue requirement. Great Oaks indicates that blending (CDPH's low-cost treatment option) is not a viable option when wells are located far apart from one another. According to Great Oaks, Well 07 Monterey Road, when sampled in 2001/2002, contained Chromium-6 levels above the proposed MCL of 10 ppb. This well is not located near another well. Thus, Great Oaks believes low-cost blending is not a viable option if treatment is necessary.

Great Oaks reiterates that by complying with CDPH's drinking water standards for Chromium-6 it is benefiting customers through improved drinking water safety that is significant and sufficient to meet the Commission's criterion for ratepayer benefit.

DISCUSSION

The publication of CDPH's proposed drinking water standard for Chromium-6 on August 22, 2013 has set the state's water service industry on a path for recognizing and remediating Chromium-6 contamination once the final MCL is established by CDPH. This will occur at the earliest, according to CDPH, sometime in 2014. When a final Chromium-6 MCL is adopted, Great Oaks will be responsible for bringing its water system into compliance. This may result in Great Oaks incurring compliance costs that could not have been foreseen in its last GRC and that may arise before a decision in its next GRC expected by July 1, 2016.

When CDPH's Chromium-6 MCL is finalized, required compliance with the new standard will benefit Great Oaks' ratepayers. The cost of Great Oaks' compliance with a yet-to-be determined final MCL is unknowable at this time, not the least because the final MCL may have a significant

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impact on which wells will need to be treated and the amount of treatment that may be required. Great Oaks' citation to CDPH's industry average compliance cost estimate, while informative, does not tell us what Great Oaks' actual compliance costs may be. Great Oaks' compliance costs in the absence of a low-cost blending option may be significant based on the CDPH's industry-average compliance costs. As such, we find that Great Oaks has met its burden that establishing the Chromium-6 Memorandum Account is in the public interest.

Although we find the establishment of the Chromium-6 Memorandum Account is in the public interest, we agree with ORA that it would be premature to have this account effective prior to the finalization of the MCL. As such, the Chromium-6 Memorandum Account we authorize to be incorporated into Great Oaks' Tariff (Preliminary Statement Q) is not effective until such time as the final Chromium-6 MCL is adopted. We define this event as the date when CDPH's final Chromium-6 MCL is approved by the Office of Administrative Law. Only costs incurred after this date are eligible to be booked into the Chromium-6 Memorandum Account. These costs should include testing, treatment, remediation, and other costs associated with complying with CDPH's final Chromium-6 MCL regulation.

Costs associated with following and commenting on CDPH's proposed MCL should be insignificant and are appropriately covered within the revenue requirement we have already authorized for Great Oaks in D.13-05-020. Incurring treatment and remediation costs prior to a final Chromium-6 MCL having been adopted is not a prudent course of action given the various uncertainties at this time identified by ORA. (Protest at p.3). We have revised Great Oaks' Tariff Sheet 726-W incorporating the Chromium-6 Memorandum Account into its Preliminary Statement that was filed with Advice Letter 233-W. The revised Tariff Sheet 725-W is attached as Appendix A to the Resolution. The revisions we make are consistent with the discussion in this Resolution and the Preliminary Statement language we have adopted for other memorandum accounts. Great Oaks shall file a supplement to Advice Letter 233-W attaching a revised Tariff Sheet 725-W consistent with that shown in Appendix A.

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COMMENTS

Public Utilities Code section 311(g)(1) provides that resolutions generally must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. As such, the draft resolution was sent for public comment on October 31, 2013.

No comments were received.

FINDINGS AND CONCLUSIONS

1. By Advice Letter (AL) 233-W filed on September 3, 2013, Great Oaks Water Company (Great Oaks), a Class A water utility, seeks Commission authorization to establish a memorandum account effective September 3, 2013, for a proposed drinking water standard for Chromium-6.
2. The California Department of Public Health's (CDPH) Press Release and Initial Statement of Reasons for the proposed drinking water standard for Chromium-6 was issued on August 22, 2013. The initial comment period ended on October 11, 2013.
3. Great Oaks' request to establish a new Chromium-6 Memorandum Account is not a ministerial matter pursuant to General Order 96-B, General Rule 7.6.1. Advice Letter 233-W is processed pursuant to General Order 96-B, General Rule 7.6.2, requiring a Commission Resolution.
4. The Office of Ratepayer Advocates (ORA) filed a protest to Advice Letter 233-W on September 23, 2013 arguing that establishing a memorandum account as this time is premature.
5. The adoption of a final maximum contaminant level (MCL) for Chromium-6 by CDPH constitutes an event of an exceptional nature.
6. The adoption of a final Chromium-6 MCL is not under the utility's control.

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7. The compliance cost associated with a final Chromium-6 MCL could not have been reasonably foreseen during Great Oaks' last general rate case and may occur before a decision in Great Oaks' next general rate case scheduled by July 1, 2015.
8. If treatment is required, Great Oaks' compliance with the final Chromium-6 MCL will have a ratepayer benefit.
9. CDPH estimates that treatment costs for Chromium-6 may be substantial if the low-cost blending option is not a feasible option.
10. Great Oaks in its reply to ORA's protest indicates that blending is not a feasible treatment option as the impacted well is located far from another well.
11. Based on historic CDPH test results, Great Oaks has one well (Well 07 Monterey Road) that had Chromium-6 levels above the 10 parts per billion proposed by CDPH in its August 22, 2013 Press Release and Initial Statement of Reasons.
12. If treatment is required for Chromium-6, the costs to Great Oaks are likely substantial.
13. CDPH proposes to issue a final Chromium-6 MCL sometime in 2014.
14. CDPH's Chromium-6 MCL will be final when the new regulation is approved by the Office of Administrative Law.
15. Great Oaks' Advice Letter 233-W requesting to establish the Chromium-6 Memorandum Account should be authorized as amended by Tariff Sheet 726-W attached as Appendix A to this Resolution.
16. The Chromium-6 Memorandum Account should be effective beginning with the date that the Chromium-6 MCL regulation is finalized. Only costs incurred after this date are eligible to be booked to the Chromium-6 Memorandum Account.
17. Great Oaks should file a supplement consistent with Tariff Sheet 726-W in Appendix A within five days of the effective date of this Resolution.

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THEREFORE IT IS ORDERED THAT:

1. Great Oaks Water Company Advice Letter 233-W seeking authorization to establish the CDPH Chromium-6 Compliance Memorandum Account for the purpose of tracking compliance costs with the final drinking water standard for hexavalent chromium to be established by the California Department of Public Health is approved as supplemented by Tariff Sheet 726-W attached as Appendix A to this Resolution.
2. Great Oaks Water Company shall file a supplement to Advice Letter 233-W consistent with Appendix A to this Resolution within five days of the effective date of this Resolution.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on December 5, 2013; the following Commissioners voting favorably thereon.

PAUL CLANON
Executive Director

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APPENDIX A

PRELIMINARY STATEMENT

Q. CDPH Chromium 6 Compliance Memorandum Account:

1. **PURPOSE:** The purpose of the CDPH Chromium 6 Compliance Memorandum Account is to track expenditures (capital and operating costs) due to compliance related to the final Chromium-6 Maximum Contaminant Level (MCL) or drinking water standard adopted by the California Department of Public Health (CDPH). Great Oaks Water Company may begin tracking expenditures in this account after a final drinking water standard is adopted by the CDPH, and may request recovery of the tracked expenditures through a one-time Tier 3 Advice Letter, or through its next GRC, according to the procedures described below.
2. **APPLICABILITY:** Applicable to all customers served by Great Oaks Water Company. The CDPH Chromium 6 Compliance Memorandum Account is to be closed as part of Great Oaks Water Company's next General Rate Case ("GRC") pursuant to a reasonableness review.
3. **RATES:** The CDPH Chromium 6 Compliance Memorandum Account has no rate component.
4. **ACCOUNTING PROCEDURE:** After a final drinking water standard for Chromium 6 is adopted by the CDPH, Great Oaks Water Company shall make the entries described below. Expenditures that may be tracked in this account are: engineering, design, permitting, construction, capital carrying, labor, overhead, operations and maintenance, one-time and ongoing operational and monitoring expenditures for treatment most suited to a particular site or sites; potential acquisition expenditures of purchasing land to construct treatment facilities, and/or expenditures related to well abandonment as a cost-effective strategy for compliance, and capital related costs (including return on investment, income taxes, ad valorem tax, depreciation, and other taxes and fees) that are over and above those that the Commission has approved for recovery through base rates. Great Oaks Water Company may not track in this memo account costs that can be reasonably forecasted for inclusion in Great Oaks Water Company's next general rate case (i.e., Great Oaks Water Company may not include in this memorandum account costs and revenue requirement expected to be incurred starting in July 1, 2016, the beginning of the GRC cycle.
 - a. A debit or credit entry equal to expenditures for compliance with the final drinking water standard, as described above;
 - b. A debit or credit entry equal to the incremental revenue requirement of each operationally in-service and closed to plant capital investment for compliance with the final drinking water standard (including return on investment, income taxes, ad valorem tax, depreciation, and other taxes and fees), as described above;
 - c. A monthly debit or credit equal to the average balance in each segment of the account multiplied by 1/12th of the most recent month's interest rate on Commercial Paper (prime, 90-day) published in the Federal Reserve Statistical Release H-15.

(N)

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PRELIMINARY STATEMENT **(continued)**

d. Account balances will be amortized as part of a general rate case or via advice letter, at the Company's discretion, per Standard Practice U-27-W.

4. EFFECTIVE DATE: The CDPH Chromium 6 Compliance Memorandum Account is effective the date the California Department of Public Health's final Chromium-6 drinking water standard regulation is approved by the Office of Administrative Law.

5. REGULATORY PROCEDURE:

a. Required Justifications: For each capital project, Great Oaks Water Company will provide detailed justifications that contain least-cost analysis considering all feasible alternatives, including but not limited to blending, removing the well from active status, and Best Available Technologies ("BATs") for Chromium 6 treatment as specified in Title 22, California Code of Regulations. The need to maintain the affected well's active status, thus requiring capital investment, must be supported with consideration of available water supply resources, including new water supply resources, including new supply projects authorized in the last GRC.

b. For recovery through an advice letter: Great Oaks Water Company may only file one Tier 3 advice letter. When the last capital project is nearing completion (operationally in-service and closed to plant), approximately one month before an advice letter seeking recovery is filed, Great Oaks Water Company will confer with the Office of Ratepayer Advocates to alert it of the advice letter filing, and begin providing the data supporting both the capital projects and expenses in the memo account for which recovery will be requested. The advice letter will request (a) inclusion of the revenue requirements for the authorized projects in rates going forward, and (b) a surcharge to recover the incremental revenue requirement and expenses tracked in the memo account.

c. For recovery in a GRC: To the extent that incremental Chromium 6 expenditures are not included in the beginning plant balance for the next GRC, or are not otherwise recovered, Great Oaks Water Company may request recovery in the next GRC. In this event, Great Oaks Water Company shall note the request in the Chromium 6 Compliance Memorandum Account for tracking purposes.

END OF APPENDIX A

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CERTIFICATE OF SERVICE

I certify that I have by either electronic mail or postal mail this day served a true copy of Draft Resolution No. W-4965 on all parties in these filings or their attorneys as shown on the attached list.

Dated December 5, 2013, at San Francisco, California.

/s/ JENNIFER PEREZ

Jennifer Perez

Parties should notify the Division of Water and Audits, Fourth Floor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on which your name appears.

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GREAT OAKS WATER COMPANY SERVICE LIST OF DRAFT RESOLUTION W-4965

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San Jose, CA 95121

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County of Santa Clara
70 W. Hedding Street
San Jose, CA 95110

Safe Drinking Water Office
Department of Water Resources
1416 9th Street, Room 804
Sacramento, CA 95814

Office of Regulatory Affairs
California Water Service Company
1720 North First Street
San Jose, CA 95112

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