

WATER/RSK/JB5/TS2/rlj

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

DIVISION OF WATER AND AUDITS

RESOLUTION NO. W-4885

Water and Sewer Advisory Branch

October 20, 2011

**R E S O L U T I O N**

**(RES. W-4885), SAN JOSE WATER COMPANY (SJWC). ORDER REJECTING WITHOUT PREJUDICE SJWC'S REQUEST TO AMORTIZE ITS MANDATORY CONSERVATION REVENUE ADJUSTMENT MEMORANDUM ACCOUNT (MCRAMA) AND REFERRING THIS ISSUE TO BE REVIEWED AND RESOLVED IN SJWC'S NEXT GENERAL RATE CASE (GRC) APPLICATION.**

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**SUMMARY**

This Resolution rejects without prejudice, SJWC's request to recover in rates, as requested by Supplemental Advice Letter (AL) 415-A filed on July 8, 2010, the amount of \$5,740,078 by adding a surcharge of \$0.0944 per 100 cubic feet to the Quantity Rates in each customer's bill to be recovered over twelve months. This Supplemental AL supersedes SJWC's original filing of AL-415 filed on June 3, 2010, requesting recovery in the amount of \$6,011,377 by adding a surcharge of \$0.0989 per 100 cubic feet to the Quantity Rates. The increases requested were to recover the difference between adopted revenues and actual revenues tracked in SJWC's Mandatory Conservation Revenue Adjustment Memorandum Account (MCRAMA) resulting from reduced water consumption by customers during the period of August 3, 2009 through May 1, 2010. In this Resolution, we reject without prejudice SJWC's request for recovery of its MCRAMA and order that SJWC include this issue as part of its next General Rate Case (GRC) Application to be filed in January 2012. We conclude that the Division of Ratepayer Advocates (DRA) is correct that evidentiary hearings are necessary prior to any consideration to amortize balances in the MCRAMA in order to resolve the factual questions discussed herein. SJWC's GRC application will afford a procedural opportunity for these evidentiary hearings.

**BACKGROUND**

SJWC, a Class A water utility, provides water service to approximately 217,000 residential and industrial customers in parts of Cupertino and San Jose, and in Campbell, Los Gatos, Monte Sereno, and Saratoga -- and in contiguous territory in

Santa Clara County. SJWC's present rates became effective on January 1, 2010, as authorized by AL 409.<sup>1</sup>

*A. The MCRAMA*

On May 27, 2009, SJWC filed AL 407 requesting Commission authority to establish the MCRAMA. The purpose of the MCRAMA was to track extraordinary expenses and revenue shortfalls associated with SJWC's conservation measures implemented as a result of a Santa Clara Valley Water District (SCVWD) water shortage alert. SCVWD issued Resolution 09-25 on March 24, 2009, which requested a 15% mandatory conservation on total sales on all water retailers in Santa Clara County, including SJWC.

SJWC implemented conservation measures intended to achieve the goals set out by SCVWD consistent with the Commission's water conservation goals and its tariffs.<sup>2</sup> SJWC requested authority to record in the MCRAMA the revenue impact due to these conservation measures and associated administrative and operating costs not otherwise recoverable through memorandum or balancing accounts, or any other mechanism recognized by the Commission. SJWC indicated it would seek recovery of amounts recorded in the MCRAMA in its next general rate case, or other regulatory proceeding as directed by the Commission.

On August 3, 2009, SJWC filed Supplemental AL 407-D, which clarified the accounting procedures for the MCRAMA. Supplemental AL 407-D became effective on August 3, 2009. In AL 407-D the utility stated that the MCRAMA would remain in effect until May 1, 2010, or until SCVWD declared over the water shortage and conservation goals, whichever happened first. SJWC seeks to recover the balances booked into its MCRAMA up to May 1, 2010.

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<sup>1</sup> The utility filed AL 409 pursuant to Ordering Paragraph #5 of D.09-11-032, which authorized SJWC to file a Tier 1 AL requesting an escalation adjustment for 2011 to be calculated in conformance with the Rate Case Plan adopted in D.07-05-062 (Appendix A).

<sup>2</sup> SJWC sought and received authority to open the MCRAMA in conjunction with the imposition of non-essential water use restrictions under SJWC's Rule 14.1 (Water Conservation and Rationing Plan). This rule provides for voluntary conservation measures and no fines. (Mandatory conservation measures that include fines for violations are available under Tariff Schedule No. 14.1 (Mandatory Water Conservation and Rationing), but SJWC does not have such a schedule.) SJWC requested no measures/fines be imposed pursuant to its Rule 14.1 when establishing the MCRAMA.

### *B. Other relevant rate-making mechanisms*

The rate-making mechanism the Commission has authorized for SJWC is a “Monterey-style” Water Revenue Adjustment Mechanism (Monterey-style WRAM), per D.08-08-030.<sup>3</sup> The Monterey-style WRAM tracks the difference between revenues SJWC receives for actual metered sales through the tiered volumetric rates established in D.08-08-030 and the revenues SJWC would have received through the uniform, single quantity rates if those rates had been in effect.

In contrast, the Commission has adopted a Water Revenue Adjustment Mechanism/Modified Cost Balancing Account (WRAM/MCBA) rate-making mechanism for other Class A water utilities with conservation rate designs. The WRAM/MCBA tracks the difference between authorized and adopted revenues and authorized and adopted variable costs. The MCRAMA and WRAM/MCBA are similar in that both rate-making mechanisms provide a means to compensate water utilities for sales revenue that is less than that adopted by the Commission. The MCRAMA tracks losses in sales revenue due to conservation, while the WRAM/MCBA compensates utilities for all losses in sales revenue, irrespective of its source. The MCRAMA also includes a 20 basis point reduction on the return on equity as an offset for the lower risk the utility has through this partial revenue protection. (See also the discussion in section D below.)

### *C. The rejection of AL 415-A and issuance of the First Draft Resolution*

On June 3, 2010, SJWC filed Advice Letter 415 requesting amortization of its MCRAMA. SJWC requested recovery in rates the amount of \$6,011,377 by adding a surcharge of \$0.0989 per 100 cubic feet to the Quantity Rates in each customer’s bill to be recovered over twelve months.

On June 23, 2010, DRA requested and received an extension of the protest period for AL 415 to resolve some issues in the filing.<sup>4</sup> SJWC filed Supplemental AL 415-A on July 8,

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<sup>3</sup> D.08-08-030 is SJWC’s most recent conservation rate design case. In this decision, the Commission implemented for SJWC two-tiered increasing block rates for residential customers in conjunction with the Monterey-style WRAM.

<sup>4</sup> DRA’s proposed changes included removal from recovery of the portion of SJWC’s Monterey-style WRAM Balancing Account associated with the calculation of the MCRAMA as well as gross up for Local Franchise Tax and Uncollectibles.

2010, resolving these issues<sup>5</sup> and amending its original request to recover in rates the amount of \$5,740,078 by adding a surcharge of \$0.0944 per 100 cubic feet to the Quantity Rates in each customer's bill to be recovered over twelve months.

On November 29, 2010, the Division of Water and Audits (DWA) issued a letter rejecting without prejudice AL 415-A on grounds that the recovery would result in the modification of a Commission decision, i.e., D.08-08-030, and was therefore a matter inappropriate for an advice letter. (For the reasons why DWA rejected the AL, see the discussion below with respect to the issuance of the First Draft Resolution.) In its rejection letter DWA noted that SJWC could seek a petition for modification of D.08-08-030.

On December 7, 2010, SJWC requested Commission review of the DWA's rejection without prejudice of AL 415-A.

On April 29, 2011, a draft resolution (hereinafter the First Draft Resolution) was mailed to the utility and protestants for comments, which affirmed DWA's rejection of AL 415-A and denied SJWC the authority to recover in rates the amount recorded in its MCRAMA. The First Draft Resolution concluded that authorization of SJWC's request in AL 415-A to amortize funds in the MCRAMA would supplement the recovery the Commission had authorized in D.08-08-030 for SJWC under the Monterey-style WRAM, and thus modify the rate-making mechanism the Commission had authorized for SJWC in D.08-08-030.<sup>6</sup> Also, the First Draft Resolution concluded that the appropriate vehicle for SJWC to make this amortization request was to file a petition to modify D.08-08-030 consistent with the Commission's Rules of Practice and Procedure and with GO 96-B, Rule 5.2.<sup>7</sup>

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<sup>5</sup> SJWC removed the Monterey-style WRAM portion from the MCRAMA request and stated that it would request authorization to amortize the Monterey-style WRAM balance at a later date.

<sup>6</sup> The First Draft Resolution concluded that amortization of the MCRAMA would essentially grant to SJWC the recovery it would have obtained under a WRAM/MCBA ratemaking mechanism.

<sup>7</sup> GO 96-B, Rule 5.2 provides in relevant part that a utility must file a petition for modification where the utility requests modification of a decision issued in a formal proceeding or otherwise seeks relief that the Commission can grant only after holding an evidentiary hearing, or by decision rendered in a formal proceeding.

SJWC filed comments with respect to the First Draft Resolution on June 15, 2011. In its comments, SJWC argued that SCVWD's conservation declaration was mandatory<sup>8</sup> and that SJWC was not protected from any revenue shortfall resulting from SCVWD's conservation measures.

#### *D. The Second Draft Resolution*

On July 13, 2011, DWA withdrew from the Commission's agenda the First Draft Resolution and, upon further review, prepared a new draft resolution (hereinafter the Second Draft Resolution) for the Commission's consideration and approval that granted SJWC recovery of its MCRAMA. The Second Draft Resolution concluded that SJWC's amortization request complied with the requirements and risk reduction adjustments, which included a 20 basis point reduction on equity, set forth in two other Commission decisions, D.90-08-055 and D.91-10-042,<sup>9</sup> and that amortization here was appropriate under the mechanisms set forth in these decisions.

The Second Draft Resolution concluded that even though amortization of the MCRAMA would change the rate-making mechanism the Commission authorized for SJWC in D.08-08-030 and thus SJWC would need to file a petition to modify this decision as required by GO 96-B, General Rule 5.2, here it would be appropriate for the Commission to authorize an exception to this rule, pursuant to its authority under GO 96-B, Rule 1.3.<sup>10</sup>

Finally, the Second Draft Resolution concluded that because recovery of the MCRAMA would result in modification of a previous Commission decision, i.e., D.08-08-030,

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<sup>8</sup> The First Draft Resolution had concluded that the conservation measures at hand were voluntary because neither SCVWD nor SJWC imposed penalties or fines for the failure to meet conservation measures.

<sup>9</sup> The Commission issued these decisions in the Commission's Order Instituting Investigation 89-03-005, *Measures to Mitigate the Effect of Drought on Regulated Water Utilities, Their Customers, and the General Public*.

<sup>10</sup> GO 96-B, Rule 1.3 provides that the Commission can authorize exceptions to the GO 96-B rules if warranted by specific circumstances or certain situations. The Second Draft Resolution concluded that in this instance it was appropriate for SJWC to seek recovery of the balances in the MCRAMA and for the Commission to waive the requirement for seeking petition for modification of D.08-08-03 because SJWC's recovery request complied with D.90-08-055 and D.91-10-042 and SJWC and DRA, the parties to the settlement that resulted in D.08-08-030 and gave rise to the Monterey-style WRAM, had resolved all disagreements with respect to the amortization of MCRAMA.

parties to that decision would need to be provided, as is required by Public Utilities Code section 1708, notice and an opportunity to be heard on this issue.<sup>11</sup>

Consistent with Public Utilities Code section 1708, the Second Draft Resolution was mailed for comment to the parties on the service list for D.08-08-030.

*E. DRA's request for an evidentiary hearing and SJWC's reply*

The Second Draft Resolution was mailed for 30-day public review and comment on August 9, 2011. Comments were due on August 30, 2011.

On August 30, 2011, DWA issued, at the Commission's Legal Division's request, a letter extending the period for filing comments on the Second Draft Resolution to September 12, 2011, to provide an opportunity for the filing of any additional comments on the matter of whether an evidentiary hearing was needed prior to the Commission adoption of the draft Second Draft Resolution amortizing the MCRAMA. Pursuant to this letter, interested persons requesting an evidentiary hearing were required to discuss in their comments: (1) the reasons(s) why an evidentiary hearing was needed; (2) the issues requiring an evidentiary hearing; (3) the material factual issues that were in dispute; and (4) what testimony the interested person would put forth at an evidentiary hearing.

On September 12, 2011, DRA filed comments requesting an evidentiary hearing. With respect to the first issue above, DRA stated that Public Utilities Code 1708.5(f) afforded parties to D.08-08-030 the right to an evidentiary hearing because the "relief requested in AL 415-A changes the revenue adjustment mechanism authorized in D.08-08-030..., [which] was issued after the Commission evidentiary hearings". (DRA's September 12, 2011 comments to the Second Draft Resolution, at p. 4.)

DRA argued that the following issues require an evidentiary hearing: (1) "[t]he policy implications of interaction between the Monterey-style WRAM and the MCRAMA"; (2) "[w]hether the basis for establishing the Monterey-style WRAM has changed since it was authorized in D.08-08-030, for example by the conditions that prompted the request for the MCRAMA"; and (3) "[t]he role of D.90-08-055 and D.91-10-042 (which did not authorize the MCRAMA in question) in justifying the relief requested in AL 415-A or in serving as a basis for compliance with Commission orders". (*Id.*, at p. 4.)

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<sup>11</sup> Public Utilities Code section 1708 provides: "The commission may at any time, upon notice to the parties, and with the opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision."

DRA pointed out the following material factual issues in dispute: (a) “[t]he statement [in the Second Draft Resolution] that SJWC implemented additional water conservation measures as a result of SCVWD’s water shortage alert and the implication that the revenues tracked in the MCRAMA are due to those measures”; (b) “SJWC’s claim in its request for review of Draft Resolution W-4875 that the MCRAMA is different from other companies’ WRAM/MCBAs because it only tracks quantity revenues in the residential sector”; and (b) “SJWC’s reference in its comments on Draft Resolution W-4875 to ‘water waste prohibitions and tiered rates’.” (*Id.*, at p. 8.)

DRA stated that at an evidentiary hearing it would put forth the following:

(1) testimony analyzing “the relationship between the Monterey-style WRAM and the MCRAMA and consider whether having both mechanisms creates unduly favorable outcomes for ratepayers or shareholders”; and (2) testimony analyzing “consumption data before and after the MCRAMA was implemented, as well as conservation activities implemented by SJWC”. (*Id.*, at p. 10.)

On September 14, 2011, SJWC filed a reply to DRA’s comments. In its reply, SJWC stated that there is no procedural mechanism available for evidentiary hearings on an advice letter or a draft resolution and that for evidentiary hearings to be set, the matter would have to be formally docketed as a new application or a petition for modification of D.08-08-030. SJWC also stated that allowing for evidentiary hearings here would cause “bureaucratic delay and expense” and be “unjustified, unnecessary, contrary to public policy, and contrary to the Commission’s own policies favoring regulatory streamlining as set forth in the Water Action Plan”. (See page 2 of SJWC’s September 14, 2011 reply to DRA’s September 12, 2011 comments to the Second Draft Resolution.)

## **NOTICE AND PROTESTS**

SJWC gave public notice of its rate increase request via newspaper notice and customer bill inserts, per General Order 96-B (GO 96-B), Industry Rule 3.1 and General Rule 4.2. The public notice in the San Jose Mercury News ran on Saturday June 5, 2010. The bill inserts were provided from June 17, 2010, to August 16, 2010, as residential customers are on bi-monthly billing. The publication and bill inserts indicate the proposed increases to the applicable rate schedules.

SJWC served copies of AL 415 and AL 415-A in accordance with GO 96-B, Industry Rule 4.1 and General Rules 4.3 and 7.2. Service was provided to SJWC’s Service List. Three protests were filed.

Two protests stated that although the customers continued to conserve water their bills were higher during the effective period of the MCRAMA as compared to the period before the MCRAMA was implemented. SJWC cannot earn more than its authorized

revenues approved by the Commission. As such, customers are not penalized for conserving water and only pay up to the authorized level granted by the Commission. Another customer questioned excessive salaries and expenses for SJWC. SJWC's salaries and expenses are routinely audited by the DRA during general rate cases so that SJWC does not burden its customers with inflated figures for expenses.

## **DISCUSSION**

We have reviewed DRA's comments on the need for an evidentiary hearing prior to allowing recovery of the balances in the MCRAMA. We find that DRA's comments have merit and that an evidentiary hearing on the issue we discuss below is warranted. We note that in its reply comments SJWC argued that providing an evidentiary hearing would be procedurally difficult and cause delay.<sup>12</sup> We cannot put considerations of expediency before the duty we have under Public Utilities Code to provide for an evidentiary hearing here. Moreover, as we discuss below, we believe there is an appropriate procedural mechanism here, i.e. SJWC's impending GRC application, which will provide an appropriate forum for an evidentiary hearing.

### *a. Why an evidentiary hearing is needed*

In its comments, DRA argues, and we agree, that the Public Utilities Code Section 1708.5(f) affords parties the right to an evidentiary hearing if a decision reached after an evidentiary hearing is to be modified.<sup>13</sup> Public Utilities Code section 1708 allows us to modify a past decision as long as we give "notice to the parties...and...the opportunity to be heard as provided in the case of complaints". The meaning of this language is made clear in Public Utilities Code section 1708.5(f), which states that "parties to the original proceeding shall retain any right to an *evidentiary hearing* accorded by Section 1708". (Emphasis added.) As we discuss above, the First and Second Draft Resolutions concluded, and we agree, that amortization of the MCRAMA would modify D.08-08-

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<sup>12</sup> SJWC also repeated arguments it made in response to the First Draft Resolution about why amortization of the MCRAMA is appropriate. Thus, SJWC's comments, which did not rebut DRA's arguments, provide us no basis upon which to conclude that DRA has not justified the need for an evidentiary hearing.

<sup>13</sup> In its reply comments, SJWC's appear to argue that there is no statutory requirement for an evidentiary hearing because DRA cited to Public Utilities Code section 1708.5(f) and this provision addresses situations involving the adoption of regulations whereas the matter at hand involves a decision approving a settlement agreement. DRA's reliance on this provision is not unfounded because as we discuss below this section clarifies the extent of our duties under Public Utilities Code section 1708.

030, a decision we adopted after conducting evidentiary hearings.<sup>14</sup> Accordingly, pursuant to the Public Utilities Code, parties to D.08-08-030 have the right to an evidentiary hearing before we authorize any recovery under the MCRAMA.

*b. Issues requiring an evidentiary hearing*

DRA argues that an evidentiary hearing is needed to address policy implications with SJWC concurrently applying the MCRAMA and Monterey-style WRAM. Also, DRA argues that an evidentiary hearing is necessary to consider whether the basis for establishing the Monterey-style WRAM has changed since its adoption of D.08-08-030. We have considered the arguments DRA makes to support its contentions here and find that they have merit.

In its comments, DRA explains that when the Commission adopted the Monterey-style WRAM in D.08-08-030 it considered “specific reasons” based on the circumstance at that time and in a proceeding where parties also had the opportunity to argue what would be a fair recovery to SJWC given these circumstances. Citing to D.08-08-030, DRA argues:

D.08-08-030 states that the conservation rate design, which was implemented in conjunction with the Monterey-style WRAM, was “set to prevent rate shock and to be consistent with the take-or-pay provisions in San Jose’s contract with the Santa Clara Valley Water District...This (contract) requires a gradual reduction in consumption in order to ensure San Jose does not pay for scheduled water its customers did not use.” The decision goes on to state that “The settling parties agree this mechanism complements San Jose’s limited water supply and adequately ensure the recovery of sufficient revenue.” (DRA’s September 12, 2011 comments to the Second Draft Resolution, at page 6.)

Furthermore, DRA also explains, that when the Commission authorized the Monterey-style WRAM it contemplated that SJWC would face a gradual reduction in water consumption and that the drop in consumption that has actually occurred during the

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<sup>14</sup> As we explained above, recovery of the MCRAMA would supplement for the period August 3, 2009 through May 1, 2010, the recovery we authorized for SJWC in D.08-08-030 under the Monterey-style WRAM and essentially provide to SJWC the recovery it would have achieved if instead of the Monterey-style WRAM we had authorized a WRAM/MCBA ratemaking mechanism for this period.

period of the application of the MCRAMA is not that which was contemplated in D.08-08-030.<sup>15</sup>

Furthermore, DRA explains that by authorizing recovery of the MCRAMA now (or in the future when SJWC again might decide that it is advantageous for it to implement this mechanism) the Commission would allow SJWC to maximize its revenues without having considered what its impact is to the risk considerations upon which the Commission issued D.08-08-030 and whether any changes to these risks considerations resulting from recovery under the MCRAMA would be fair to both the ratepayers and shareholders. DRA argues:

[D]uring the 2008 -2010 drought and currently [through the AL authorizing the MCRAMA], San Jose has had access to two mechanism that alter its revenue recovery: an on-going price adjustment mechanism (Monterey-style WRAM), and a temporary revenue adjustment mechanism (MCRAMA) which it can activate during times of drought or when its wholesaler has called for a reduction in consumption. The ability to implement two concurrent mechanisms that change revenue recovery removes some of the characteristics of each mechanism that are intended to balance risks when operating alone, and allows SJWC to select the mechanisms that maximize its revenues. (*Id.*, at page 5.)

Thus, DRA concludes, and we agree, that “[g]iven the complexity of the interactions between the Monterey-style WRAM and the MCRAMA and the potential effect of these interactions on SJWC’s risk profile, testimony and hearing ... are in order” prior to the authorizing recovery of the MCRAMA. (*Id.*, at page 6.) In light of DRA’s arguments, we find that an evidentiary hearing prior to the authorization of the recovery of the MCRAMA is necessary in order to consider how revenue recovery under the MCRAMA, in conjunction with the revenue recovery allowed to SJWC under the Monterey-style WRAM authorized in D.08-08-030 changes the risk/reward calculation for ratepayers and shareholders.

DRA also argues that an evidentiary hearing is needed to address the role of D.90-08-055 and D.91-10-041 in justifying the amortization of the MCRAMA because these decisions did not authorize its establishment. While it appears that these may be matters that could be addressed through the comment process, nevertheless, we will require SJWC to include the issue of the role of D.09-08-055 and D.91-10-041 in justifying the amortization of the MCMRAMA among the issues it addresses in its GRC

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<sup>15</sup> DRA argues that SCVWD recent water shortage alert and conservation request reflects that there is a change in the circumstances to SJWC demand and supply situation from what was contemplated when SJWC obtained its revenue recover under the Monterey-style WRAM.

application because we find that doing so will not present undue burdens or delays, given our finding on the need for an evidentiary hearing on other matters, and because this issue is material to the matters at hand.

*c. Material factual issues in dispute<sup>16</sup>*

DRA argues there is a factual dispute as to whether the revenue tracked in the MCRAMA corresponds to conservation measures SJWC implemented as a result of the SCVWD's water shortage alert. (In fact, DRA states that its understanding is that SCVWD conduct the outreach and other conservation activities and that during this water shortage SJWC relied on SCVWD's efforts.) In support of this argument, DRA points to the balance in the memorandum account tracking conservation-related expenses associated with this alert, which as of August 30, 2011 was \$11,108 and which DRA argues is an insignificant amount and suggests that SJWC did not "implement[] significant additional water conservation measures to encourage their customers to reduce consumption". (*Id.* at p. 8.)

DRA also cites to language from SJWC's 2011 Form 10-K Report filed with the Securities and Exchange Commission. This language states:

Increased water conservation efforts and construction codes, which require the use of low-flow plumbing fixtures, have contributed to a trend of declining water usage per residential customer. Additionally, in the current economic environment, business water usage continues to decline. The decline for San Jose Water Company in residential and business usage from 2009 to 2010 was 4.9% and 3.2%, respectively. The decline for CLWSC in combined residential and business usage from 2009 to 2010 was 6.8%. Fluctuations in customer demand for water could also be due to seasonality, weather or lifestyle choices, all of which could affect Water Utility Services' results of operations. (*Id.*, at page 9, citing to SJWC's 2011 Form 10-K Report with the Securities and Exchange Commission.)

Thus, this report reflects that other factors (e.g., economic issues, past conservation efforts not relating to the SCVWD alert) contribute to the decline in water consumption by SJWC's customers and raises the possibility that the decline in revenues reflected in the MCRAMA (which is supposed to be tracking losses in revenues resulting from conservation efforts related to the SCVWD water shortage alert) may only be due in

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<sup>16</sup> As we stated above, SJWC did not address the issue of whether there are material factual issues in dispute justifying the need for an evidentiary hearing. We do not consider the utility's failure to respond as proof that there is consensus on these issues.

part (or even possibly not at all) to the conservation activities coming out of the SCVWC water shortage alert.

We find merit in DRA's argument that there is an issue of material fact on this issue. Thus, we conclude that DRA has justified a need for an evidentiary hearing on the issue of whether all the lost sales revenue tracked in the MCRAMA is the result of conservation measures coming about from SCVWD's water shortage alert and, if not, how much of the lost sales revenue is the result of conservation measures associated with SCVWD's water shortage alert and how much is due to earlier conservation efforts or factors other than conservation.<sup>17</sup>

DRA also makes two additional arguments regarding other material factual issues in disputes that we do not find meritorious. DRA takes issue with a statement SJWC made in its response to the First Draft Resolution that the MCRAMA is different from other companies WRAM/MCBAs because it only tracks quantity revenues in the residential sector. DRA argues that this statement reflects that there may be a mistake in the amortization request because the request is based on the calculation of lost revenues from all customer classes and SJWC's statement suggests that only lost revenues from residential customers should be tracked in the MCRAMA. We believe SJWC made this statement in error.<sup>18</sup> Also, DRA argues that there is a dispute regarding a statement SJWC made in comments on the First Draft Resolution on the issue of water waste prohibitions and tiered rates. This issue does not appear to be material to the matter at hand.

*d. Testimony to be presented at an evidentiary hearing*

We find that DRA has stated specific testimony that it would put forth at an evidentiary hearing (see the discussion in the Background section E) and that this testimony is relevant to the issues we have identified above as requiring resolution in an evidentiary hearing. Accordingly, holding an evidentiary hearing to consider this testimony would be productive.

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<sup>17</sup> For example, if as a result of hearings it is determined that SJWC's sales revenue was already down by 10% from adopted revenue prior to the establishment of the MCRAMA, this amount would not be eligible for recovery from the MCRAMA.

<sup>18</sup> However, if SJWC only intended to track in the MCRAMA lost revenues coming only from the residential sector, and the current figures in the amortization request reflect lost revenues coming from all customer classes, SJWC should correct this mistake when it includes the issue of the amortization of the MCRAMA in its upcoming GRC application.

*e. The forum for an evidentiary hearing*

Pursuant to General Order 96-B, General Rule 5.1, an advice letter process does not provide for an evidentiary hearing. A matter, such as this, that requires an evidentiary hearing may be considered only in a formal proceeding.

In its comments, DRA argues that SJWC should file a petition to modify D.08-08-030 and that the Commission should hold evidentiary hearings in the context of the modification proceeding. However, for administrative efficiency, we direct SJWC to include the matter of the amortization of the MCRAMA in its next GRC application, which SJWC will be filing in January 2012. This formal proceeding will provide an appropriate procedural mechanism and the opportunity to hold an evidentiary hearing where parties will be able to provide testimony to address the factual issues we discuss above associated with amortization of the MCRAMA. We direct SJWC to serve its 2012 GRC application on (among other persons it is required to serve) the parties on the service list to D.08-08-030 to ensure that any party to this proceeding who wants to has the opportunity to participate in an evidentiary hearing.

Based on our review of DRA's and SJWC's comments to the Second Draft Resolution and our review of the issues raised in SJWC's AL 415-A, we direct SJWC to address the following questions as part of its next GRC application, and request that DRA and other parties also provide testimony on these issues:

1. How is the risk/reward calculation changed for ratepayers and shareholders if the MCRAMA is amortized in conjunction with the existing Monterey-style WRAM?
2. How does the MCRAMA operate like a full WRAM/MCBA? Are there any differences besides the 20 basis point reduction in return on equity?
3. Has the basis for establishing the Monterey-style WRAM changed since it was authorized in D.08-08-030, for example by the conditions that prompted the request for the MCRAMA?
4. How do D.90-08-055 and D.91-10-042 (which did not authorize the MCRAMA in question) justify the amortization of the MCRAMA balance or serve as a basis for compliance with Commission orders?
5. Is the lost sales revenue tracked in the MCRAMA due to SJWC's or SCVWD's water conservation measures the result of SCVWD's water shortage alert, or the result of earlier conservation efforts or factors other than conservation measures, e.g., issues relating to the economy? If the answer is that the lost sales revenue tracked in the MCRAMA includes the result of earlier conservation efforts or factors other than conservation, what is the estimated lost sales revenue that is

the result of water conservation measures associated with SCVWD's water shortage alert?

We direct the Administrative Law Judge assigned to SJWC's GRC proceeding to include the issues raised in the questions above within the scope of issues to be examined in this proceeding, and to provide an evidentiary hearing on these issues if requested by parties.

### **COMMENTS**

Public Utilities Code Section 311(g)(1) generally requires that resolutions must be served on all parties and be subject to at least 30 days public review and comment prior to a vote of the Commission. On August 9, 2011, the Second Draft Resolution was mailed for 30-day public review and comment (and this comment period was extended as discussed above) to the utility and protestants, and to the parties on the service list for D.08-08-030. Comments were received by DRA on September 12, 2011, and SJWC filed a reply on September 14, 2011. Based on our review of these comments, we have modified the Second Draft Resolution as reflected herein.

### **FINDINGS AND CONCLUSIONS**

1. On June 3, 2010, San Jose Water Company filed Advice Letter 415 to request amortization of its Mandatory Conservation Revenue Adjustment Memorandum Account. San Jose Water Company requested to recover in rates the amount of \$6,011,377 by adding a surcharge of \$0.0989 per 100 cubic feet to the Quantity Rates in each customer's bill to be recovered over twelve months.
2. On June 23, 2010, the Division of Ratepayer Advocates requested and received an extension of the protest period for Advice Letter 415 to resolve some of its proposed changes to the filing. The proposed changes included removal of the recovery of the portion of San Jose Water Company's "Monterey Style" Water Revenue Adjustment Mechanism (Monterey-style WRAM) Balancing Account associated with the calculation of the Mandatory Conservation Revenue Adjustment Memorandum Account as well as gross up for Local Franchise Tax and Uncollectibles.
3. San Jose Water Company filed Supplemental Advice Letter 415-A on July 8, 2010, resolving these issues and stating that it would request authorization to amortize the Monterey-style WRAM balance at a later date. In Advice Letter 415-A, San Jose Water Company amended its original request and sought to recover in rates the amount of \$5,740,078 by adding a surcharge of \$0.0944 per 100 cubic feet to the Quantity Rates in each customer's bill to be recovered over twelve months.

4. On November 29, 2010, the Division of Water and Audits issued a letter rejecting without prejudice Advice Letter 415-A on grounds that the recovery was a matter inappropriate for an advice letter and that San Jose Water Company should file a petition for modification of Decision 08-08-030.
5. San Jose Water Company filed a timely request for Commission review of the Division of Water and Audits' disposition of Advice Letter 415-A on December 7, 2010.
6. Santa Clara Valley Water District issued its initial request for a 15 percent mandatory water conservation of all water retailers in Santa Clara County in Resolution 09-25 issued March 24, 2009.
7. San Jose Water Company is a water retailer in Santa Clara County.
8. The rate-making mechanism that the Commission has authorized for San Jose Water Company is a Monterey-style Water Revenue Adjustment Mechanism; the Commission authorized this rate-making treatment in Decision 08-08-030.
9. Recovery of the balance in the Mandatory Conservation Revenue Adjustment Memorandum Account would supplement, for the period August 3, 2009 through May 1, 2010, the recovery authorized under San Jose Water Company's Monterey-style Water Revenue Adjustment Mechanism and thus effectively change the rate-making mechanism authorized in D.08-08-030.
10. On April 29, 2011, the First Draft Resolution was mailed to the utility and protestants for comments, which affirmed the Division of Water and Audit's rejection of AL 415-A and denied San Jose Water Company the authority to recover in rates the amount recorded in its Mandatory Conservation Revenue Adjustment Memorandum Account.
11. On June 15, 2011, San Jose Water Company filed comments with respect to the First Draft Resolution arguing that Santa Clara Valley Water District's conservation declaration was mandatory and that it was not protected from any revenue shortfall resulting from Santa Clara Valley Water District's conservation measures
12. On July 13, 2011, the Division of Water and Audits withdrew from the Commission's agenda the First Draft Resolution and, upon further review, prepared the Second Draft Resolution for the Commission's consideration and approval that granted San Jose Water Company recovery of its Mandatory Conservation Revenue Adjustment Memorandum Account.

13. On August 9, 2011, the Second Draft Resolution was mailed for 30-day public review and comment to the utility and protestants, and to the parties on the service list for Decision 08-08-030. Comments were due on August 30, 2011. No comments were received on this date.
14. On August 30, 2011, the period for filing comments on the Second Draft Resolution was extended to September 12, 2011, to provide an opportunity for the filing of any additional comments on the matter of whether an evidentiary hearing was needed prior to the Commission issuance of the draft Resolution. Interested persons requesting an evidentiary hearing were required to discuss in their comments: (1) the reasons(s) why an evidentiary hearing was needed; (2) the issues requiring an evidentiary hearing; (3) the material factual issues that were in dispute; and (4) what testimony the interested person would put forth at an evidentiary hearing.
15. On September 12, 2011, the Division of Ratepayer Advocates filed comments contending for the need for an evidentiary hearing.
16. San Jose Water Company filed a response on September 14, 2011.
17. The Division of Ratepayer Advocates raises material factual questions on the risk/reward changes if the Mandatory Conservation Revenue Adjustment Memorandum Account is amortized in conjunction with the existing authorized Monterey-style Water Revenue Adjustment Mechanism.
18. The Division of Ratepayer Advocates raises material factual questions related to whether the balance in the Mandatory Conservation Revenue Adjustment Memorandum Account is related to conservation measures undertaken in response to Santa Clara Valley Water District's water shortage alert.
19. The Division of Ratepayer Advocates' comments raise material factual issues that require an evidentiary hearing.
20. San Jose Water Company's request to amortize its Mandatory Conservation Revenue Adjustment Memorandum Account in Advice Letter No. 415-A should be rejected without prejudice to San Jose Water Company seeking recovery in an appropriate proceeding that provides for an evidentiary hearing.
21. San Jose Water Company should seek recovery of the balance in its Mandatory Conservation Revenue Adjustment Memorandum Account as part of its January 2012 General Rate Case application.

22. The Second Draft Resolution was circulated for public comment pursuant to Public Utilities Code Section 311(g) (1).

**THEREFORE IT IS ORDERED THAT:**

1. San Jose Water Company's request to amortize its Mandatory Conservation Revenue Adjustment Memorandum Account through Advice Letter 415-A is rejected without prejudice.
2. San Jose Water Company is ordered to, and the Division of Ratepayer Advocates and are other parties may, address the following questions as part of San Jose Water Company's General Rate Case Application in January 2012.
  - a. How is the risk/reward calculation changed for ratepayers and shareholders if the Mandatory Conservation Revenue Adjustment Memorandum Account is amortized in conjunction with the existing Monterey-style Water Revenue Adjustment Mechanism?
  - b. How does the Mandatory Conservation Revenue Adjustment Memorandum Account in conjunction with the existing Monterey-style Water Revenue Adjustment Mechanism operate like a full Water Revenue Adjustment Mechanism/Modified Cost Balancing Account? Are there any differences besides the 20 basis point reduction in return on equity?
  - c. Has the basis for establishing the Monterey-style Water Revenue Adjustment Mechanism changed since it was authorized in Decision 08-08-030, for example by the conditions that prompted the request for the Mandatory Conservation Revenue Adjustment Memorandum Account?
  - d. How do Decision 90-08-055 and Decision 91-10-042 (which did not authorize the Mandatory Conservation Revenue Adjustment Memorandum Account) justify the amortization of the Mandatory Conservation Revenue Adjustment Memorandum Account balance or serve as a basis for compliance with Commission orders?
  - e. Is the lost sales revenue tracked in the MCRAMA due to SJWC's or SCVWD's water conservation measures the result of SCVWD's water shortage alert, or the result of earlier conservation efforts or factors other than conservation measures, e.g., issues relating to the economy? If the answer is that the lost sales revenue tracked in the MCRAMA includes the result of earlier conservation efforts or factors other than conservation, what is the estimated lost sales revenue that is

the result of water conservation measures associated with SCVWD's water shortage alert?

3. The administrative law judge assigned to San Jose Water Company's General Rate Case Application in January 2012 shall include the issues in Ordering Paragraph 2 above within the scope of issues to be examined in this proceeding and provide an evidentiary hearing on these issues if requested by parties.
4. 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 October 20, 2011; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director