

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the matter of the Application of the GOLDEN STATE WATER COMPANY (U133W) for an order authorizing it to increase rates for water service by \$2,911,400 or 29.9% in 2011 and by \$321,200 or 2.5% in 2012 in its Arden Cordova Service Area; to increase rates for water service by \$1,782,400 or 33.2% in 2011 and by -\$66,200 or -0.9% in 2012 in its Bay Point Service Area; to increase rates for water service by \$409,100 or 22.6% in 2011 and by \$23,300 or 1.0% in 2012 in its Clearlake Service Area; to increase rates for water service by \$1,467,000 or 48.5% in 2011 and by \$50,100 or 1.1% in 2012 in its Los Osos Service Area; to increase rates for water service by \$1,647,900 or 38.8% in 2011 and by \$343,200 or 5.9% in 2012 in its Ojai Service Area; to increase rates for water service by \$2,350,700 or 25.2% in 2011 and by \$363,200 or 3.1% in 2012 in its Santa Maria Service Area and; to increase rates for water service by \$799,500 or 6.5% in 2011 and by \$213,000 or 1.6% in 2012 in its Simi Valley Service Area

A.10-01-009
(Filed January 13, 2010)

OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES

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OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES

I. INTRODUCTION

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission and the procedural schedule established in the Assigned Commissioner and Administrative Law Judge Douglas Long's Scoping Memo and Ruling of March 11, 2010, and Administrative Law Judge Long's guidance during hearings on September 1, 2010, the Division of Ratepayer Advocates ("DRA") hereby submits its opening brief in the above-captioned proceeding. In accordance with the

direction of the ruling, DRA's Opening Brief addresses the Bay Point water treatment issues raised in A.09-08-004 and in A.10-01-009.

In particular, the Opening Brief will address the following issues. First, as a matter of fairness to ratepayers, the Commission should not include either the Hill Street Water Treatment Plant ("Hill Street Plant"), or the Randall Bold Water Treatment Plant ("Randall Bold Plant") in rate base. Second, Golden State Water Company ("Golden State") and Contra Costa Water District ("the District") have written an agreement ("Agreement") for Golden State to rent part of Randall Bold Plant from the District.¹ However, Golden State does not have an asset. Third, even if Golden State had an asset by virtue of the Agreement, it would not be an intangible asset. Fourth, Golden State's rent fees that are paid pursuant to the Agreement are an operating expense. Fifth, the Commission should require Golden State to diligently request to amend the Agreement to extend payment installments for at least ten years. Finally, if the District does not agree to a repayment term of more than five years, the Commission should require Golden State to select the five year payment plant option in the agreement. These points will be discussed in turn in Section III of the Opening Brief, entitled "Issues".

Pursuant to the Rate Case Plan, Decision 07-05-062, DRA and GSWC convened a settlement conference during the period August 24, 26, and 27, 2010 to discuss the Bay Point water treatment issues raised initially in A.09-08-004, and later included in this proceeding, but could not resolve them.

II. PROCEDURAL HISTORY

On January 13, 2010, GSWC filed an application for an order authorizing it to increase rates for water service for the seven customer service areas within its Region 1, including Arden Cordova Service Area, Bay Point Service Area, Clearlake Service Area, Los Osos Service Area, Ojai Service Area, Santa Maria Service Area, and Simi Valley Service Area. GSWC filed an amended application on January 27, 2010, and DRA filed

¹ Exhibit G-1, Golden State Water Company Application 09-08-004, Attachment A, Page 8, Section 4.2.1 provides that this Agreement can only become binding if it is approved by the Commission.

a timely protest on February 26, 2010, making DRA a party to this proceeding. The Commission held a pre-hearing conference March 3, 2010. After both parties propounded testimony, Administrative Law Judge (“ALJ”) Long presided over one round of hearings on June 21 and 22, 2010. During these hearings, ALJ Long authorized the parties to submit testimony regarding the Bay Point water quality issues addressed in A.09-08-004. ALJ Long presided over a second round of hearings to address the Bay Point water quality issues on September 1, 2010.

The rate case plan, Decision 07-05-062, places the burden of proof on Golden State to justify its request for its proposed rate increase. However, Golden State has failed to meet its requisite burden in this particular instance for all of the reasons provided in the “Issues” section below.

III. ISSUES

A. Background

In the first quarter of 2008, California Department of Public Health ordered Golden State to cease violating California Health and Safety Code §11655 and California Code of Regulations §64533 because Golden State’s Hill Street Plant produced treated water for the Bay Point system that violated the Maximum Contaminant Level (“MCL”) for total trihalomethanes (“TTHM”).² To address the violation, and continue serving water to Bay Point customers, Golden State recommended retiring the Hill Street Plant, and renting part of the District’s Randall Bold Plant.³ Golden State has made entries in its accounting to keep the Hill Street Plant in ratebase.⁴

Golden State and the District reduced the terms of the Agreement to writing.⁵ Golden State agreed to pay the District \$4.7 million. In exchange, the Golden State obtains access to the part of the District’s portion of the Randall Bold Plant.⁶ In addition,

² Exhibit G-1, Golden State Water Company Application 09-08-004 at Pages 1-3.

³ Exhibit G-1, Golden State Water Company Application 09-08-004 at Page 5.

⁴ A.09-08-004 Tr: 107: 27-28 (John Garon) in reference to Exhibit G-8.

⁵ Exhibit G-1, Golden State Water Company Application 09-08-004, Attachment A.

⁶ Exhibit G-1, Golden State Water Company Application 09-08-004, Attachment A, Page 2, Section 1.1.

the District agreed to use its Multi-Purpose Pipeline as a point of delivery for Golden State.⁷ Moreover, the District agreed to provide Golden State up to 4.4 million gallons per day (“MGD”) of treated water⁸ for Golden State then re-sell to its Bay Point customers. As a condition of the Agreement, Golden State can only re-rent part of Randall Bold Plant to an Affiliate or a party that buys the entire Bay Point System.⁹ Although the Agreement provides Golden State with the option of paying the \$4.7 million to the District over five years,¹⁰ the District has expressed willingness to consider a proposal for a longer payment period.¹¹ In spite of DRA’s recommendation that Golden State propose amending the Agreement to include a longer payment period,¹² Golden State has no plans to do so.¹³

Although the Agreement is titled “Asset Lease Agreement”, Golden State has treated the Agreement as an intangible asset rather than as a lease for accounting purposes.¹⁴

B. The Already Disadvantaged Bay Point Community Should Not Suffer Rate Base Treatment for Golden State’s Interests in Either Hill Street or Randall Bold Plants

Bay Point is one of the poorest communities in Contra Costa County.¹⁵ One-third of its residents are at, or below, the poverty levels and more than half of the children are

⁷ Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Page 3 Section 1.4 (identifies the Multi-Purpose Pipeline as belonging to the District), and Page 4 Section 2.1.1 (identifies the District’s Multi-Purpose Pipeline as the Point of Delivery).

⁸ See Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Page 2, Section 1.1 and Page 4 Section 2.1.2.

⁹ Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Page 14, Section 10.4.

¹⁰ Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Page 2, Section 1.2.1.

¹¹

¹² Exhibit D-25, Prepared Testimony of Jasjit Sekhon A.10-01-009, Page 2, Lines 24-25.

¹³ Tr: 483: 9 (Pat Scanlon).

¹⁴ Tr: 501: 7-13 (Gladys Farrow).

eligible for the free lunch program.¹⁶ In spite of this, Golden State proposes continuing to include both treatment plants in its rate base, even though one of these plants no longer serves Bay Point customers. GSWC proposes renting part of the other plant to serve these same customers.

To reduce the burden on this disproportionately high group of low-income ratepayers, DRA recommends the following ratemaking treatment for each plant. First, the Commission should take the remaining undepreciated amount relating to Hill Street Plant out of rate base, and amortize this amount over 10 years.¹⁷ Golden State has made accounting entries to keep the Hill Street Plant in ratebase.¹⁸ However, the Hill Street Water Treatment Plant is no longer used or useful, provides no benefit to ratepayers, and does not merit rate base treatment.¹⁹

Second, the Commission should require Golden State to make annual payments to the District, and include this amount as an expense in base rates.²⁰ Golden State asserts that the capacity it pays in Randall Bold Plant should be included in rate base and earned a full rate of return.²¹ However, as DRA noted in its testimony, this is not in the best interest of this already disadvantaged community.²²

If the Commission decides to continue to allow Golden State to include the rented facility in rate base, it should not allow Golden State to include the Hill Street Plant in rate base when customers receive no benefit from it.

¹⁵ D. 10-06-031 at Page 5.

¹⁶ Id.

¹⁷ Exhibit D-25, Prepared Testimony of Jasjit Sekhon A.10-01-009, Page 3, Lines 7-9.

¹⁸ A.09-08-004 Tr: 107: 27-28 (John Garon) in reference to Exhibit G-8.

¹⁹ Exhibit D-25, Prepared Testimony of Jasjit Sekhon A.10-01-009, Page 2, Line 26 to Page 3, Line 2.

²⁰ Id at Page 2, Lines 19-20.

²¹ Tr: 510: 26-27 (Gladys Farrow).

²² Exhibit D-25, Prepared Testimony of Jasjit Sekhon A.10-01-009, Page 2, Lines 18-19, and Page 3, Lines 13-14.

C. Although Golden State Has Entered Into the Agreement With the District, Golden State Does Not Have an Asset

Golden State’s contention that the Agreement represents an asset is erroneous because the Agreement does not give Golden State control or ownership title of it, and because the assets identified in the agreement continue to belong to the District. Each of these points is discussed below.

1. Golden State Does Not Control the Asset

For accounting purposes, assets are defined as probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events.²³ A particular entity controls future economic benefit only if it can obtain the benefit and control others' access to it.²⁴ Golden State lacks the requisite control of others’ use or access to the Randall Bold plant to call the future economic benefits an asset for several reasons. First, Golden State merely rents a part of the District’s portion of Randall Bold Plant,²⁵ but only the District controls which entities access its portion of Randall Bold and the water that comes from it. Second, Golden State can only re-rent its rented portion of Randall Bold to another party under a few conditions.²⁶ Because Golden State cannot re-rent its portion of Randall Bold Plant to anyone it wants and under all conditions, it cannot completely control all others’ access to its rented share of the plant.

Moreover, the Financial Accounting Standards provide, “To have an asset, an entity must control future economic benefit to the extent that it can benefit from the asset and generally can deny or regulate access to that benefit by others, for example, by permitting access only at a price.” The District is the only entity that can regulate access to the plant’s benefits, including Golden State’s access and use of the facility. Indeed, the

²³ Financial Accounting Standards Board Statement of Financial Accounting Standards Number 6, Page 16, Paragraph 25.

²⁴ Financial Accounting Standards Board Statement of Financial Accounting Standards Number 6, Page 16, Paragraph 26.

²⁵ Exhibit G-1, Golden State Water Company Application 09-08-004, Attachment A, Page 2, Section 1.1.

²⁶ Exhibit G-1, Golden State Water Company Application 09-08-004, Attachment A, Page 14, Section 10.4 discusses “Assignment”, which provides only specific circumstances under which it can assign its rented share of Randall Bold to another party.

District permits Golden State's access to Randall Bold Plant only for the price of \$4.7 million.²⁷

2. Only the District Has the Assets Identified in the Agreement

In this case, the asset belongs to the District. Several sources of authority offer guidance in the proper characterization of the Randall Bold Plant. First, the Financial Accounting Standards state "The entity having an asset is the one that can exchange it, use it to produce goods or services, exact a price for others' use of it, use it to settle liabilities, hold it, or perhaps distribute it to owners."²⁸ Here, the Randall Bold Plant belongs to the District and only the District can exchange the plant. The District is the only entity that can operate the Randall Bold Plant to produce treated water, a good. As shown by the Agreement, the District has exacted \$4.7 million in exchange for Golden State's use of Randall Bold.²⁹ Moreover, only the District holds the plant.

Even if Golden State argued that its asset is the treated water coming from the plant, the argument is specious. Viewed properly this Agreement should be considered what it manifestly is, a simple contract for the delivery of purchased water, which is treated as an operating expense. Golden State has entered into this contract because it needs to immediately and presently provide water to its customers, not because it is seeking an intangible asset. Moreover, Golden State is distributing the water to *customers*, not to owners as FASB 6 would require for the asset to belong to Golden State.

²⁷ Exhibit G-1, Golden State Water Company Application 09-08-004, Attachment A, Page 2, Section 1.2.

²⁸ Financial Accounting Standards Board Statement of Financial Accounting Standards Number 6, Page 57, Paragraph 183.

²⁹ Exhibit G-1, Golden State Water Company Application 09-08-004, Attachment A, Page 2, Sections 1.1 and 1.2.

D. Even If Golden State Had an Asset By Virtue of the Agreement, It Would Not Be an Intangible Asset

Whether one applies definitions provided by the Financial Accounting Standards Board, or by the Commission, Golden State does not have an asset. These points are discussed in turn below.

Golden State asserts intangible assets would not be the subject of a lease.³⁰ However, Golden State incorrectly cites Financial Accounting Standards Board (“FASB”) Statement of Financial Accounting Standards Number 13 (“FAS 13”)³¹ as authority for this statement. Although FAS 13 provides extensive guidance regarding the accounting treatment of leases, it does not mention intangible assets once.³² Therefore, Golden State’s statement that intangible assets are not the subject of a lease has no merit.

Moreover, even if Golden State had properly cited to FASB authority to define the Agreement as an intangible asset, Golden State’s view runs afoul of a long line of Commission definitions of intangible assets. Historically, the Commission has defined intangible asset to refer to non-physical items of value that one owns and possesses. Specifically, one line of rulemakings has defined intangible assets as follows: “‘Intangible asset’ means any asset having no physical existence, its value being set by the rights and anticipatory benefits that possession confers upon the owner. This includes intellectual property, licenses, franchises, marketable emission permits and emission offsets, etc.”³³ A second line of decisions have defined intangible assets the following way: “Intangible assets and goods” shall mean all intellectual property (whether such property constitutes patents, trademarks, service marks, copyrights, or any intellectual

³⁰ Tr: 501: 7-10 (Gladys Farrow).

³¹ Tr: 501: 5-8 (Gladys Farrow).

³² Financial Accounting Standards Board Statement of Financial Accounting Standards Number 13 et. seq.

³³ 48 CPUC2d 163; Decision No. 93-02-019, Rulemaking No. 92-08-008 at Page 35; 1992 Cal. PUC LEXIS 576, Rulemaking No. 92-08-008 at Pages 44-45.

property).³⁴ Another decision identified intangible assets to include name recognition, trust, reputation, and image of a company.³⁵

Golden State is renting a portion of the Randall Bold Plant,³⁶ a physical item. The fact that the Agreement calls this item “treated water capacity” is analogous to someone renting a room in an apartment because in both cases, one entity is renting part of the space of a physical thing. Moreover, unlike the well-established Commission definitions of intangible assets provided above, capacity in the Plant is not intellectual property, a license, a franchise, a permit, name recognition, trust, reputation or image. Similarly, Golden State does not have a water right. Golden State has not met the requirement that the portion of the plant it leases is a non-physical item.

Both parties of the Agreement understand that Golden State does not own the treatment plant, but merely rents it. First, the Agreement itself states that the District agrees to lease to Golden State part of its Randall Bold Plant.³⁷ Second, Golden State agrees to rent the same portion of plant from the District.³⁸ Therefore, Golden State has not met the ownership requirement to be an intangible asset.

For the reasons stated above, the portion of the plant that Golden State leases is not an intangible asset for accounting or for ratemaking purposes.

E. Golden State’s Agreement With the District to Rent Part Randall Bold Plant Is an Operating Expense

Based upon the above discussion, none of the provisions of the Uniform System of Accounts for assets applies to the Agreement. Instead, the Uniform System of Accounts Account Number 704 governs the proper accounting treatment of the water in the

³⁴ 2009 Cal. PUC LEXIS 410, Decision 09-08-007 at Page 18; 2009 Cal. PUC LEXIS 209 RULEMAKING 09-04-012 at Page 43; 2002 Cal. PUC LEXIS 909, Decision 02-12-068 at Page 124; 1998 Cal. PUC LEXIS 391, Decision No. 98-06-068 at Pages 24 and 25; 1997 Cal. PUC LEXIS 1212, Decision No. 97-12-011 at Page 16.

³⁵ 1997 Cal. PUC LEXIS 759, Rulemaking No. 91-08-003, Decision No. 97-08-057, at Page 314.

³⁶ Exhibit G-1, Golden State Water Company Application 09-08-004, Attachment A, Page 2, Section 1.1.

³⁷ Asset Lease Agreement Page 2, Section 1.1.

³⁸ Id.

Agreement because that account precisely describes what it represents. Account Number 704 states, “This account shall include the cost at the point of delivery of water purchased for resale. This includes charges for readiness to serve and the portion applicable to each accounting period of annual or more frequent payments for the right to divert water at the source of supply.”³⁹

Applying Account Number 704 to the water in the Agreement, the cost is \$4.7 million;⁴⁰ the point of delivery is the District’s Multi-Purpose Pipeline;⁴¹ and the water purchased for resale is access of up to 4.4 million gallons per day (“MGD”) of treated water⁴² that Golden State will then re-sell to Bay Point customers. Moreover, the readiness to serve is evident because the Agreement gives Golden State the same priority to purchase water as the District’s other wholesale treated water customers,⁴³ and the District explicitly says it does not intend to interrupt or discontinue treated water deliveries to Golden State.⁴⁴ Finally, the right to divert water at the source of supply is shown by the agreement by the District to construct an intertie connecting to the interconnection which accesses Randall Bold Plant capacity, all for the purpose of access by Golden State.⁴⁵

Pursuant to the requirements set forth in the Uniform System of Accounts, Golden State’s purchase is an operating expense, does not qualify for rate base treatment, and should therefore only recover these expenses in rates on a dollar-for-dollar basis.

³⁹ Uniform System of Accounts for Class A Water Utilities, Account Number 704, Page 96.

⁴⁰ Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Page 2, Section 1.2.

⁴¹ Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Page 3 Section 1.4 (identifies the Multi-Purpose Pipeline as belonging to the District), and Page 4 Section 2.1.1 (identifies the District’s Multi-Purpose Pipeline as the Point of Delivery).

⁴² See Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Page 2, Section 1.1 and Page 4 Section 2.1.2.

⁴³ Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Page 4 Section 2.1.2.

⁴⁴ Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Page 5, Section 2.2.2.

⁴⁵ Exhibit G-1, Golden State Water Company Application 09-08-004 Attachment A, Pages 3 and 4, Section 1.4.

F. The Commission Should Require Golden State to Diligently Request to Amend the Agreement to Extended Payment Installments for At Least Ten Years

DRA has recommended that Golden State also request the district to extend the payment period in the Agreement to 10 years, noting that customers will benefit by spreading payments over a longer period at the existing interest rate of 2.2%.⁴⁶ Nonetheless, the record consistently shows that Golden State has made – at best—half-hearted efforts to propose amending the Agreement with the District to extend the payment period. When asked whether Golden State would make any modifications to the Agreement other than those required by D.10-06-031,⁴⁷ Golden State’s representative said he was not aware of any other changes than those listed in the decision.⁴⁸

In response to DRA’s recommendation that Golden State request the District to extend the payment period for its rental of Randall Bold Plant capacity, Golden State said it “conducted some preliminary discussions with CCWD regarding these items. CCWD is willing to review a proposal from GSWC. . .”⁴⁹ DRA notes that Golden State avoids making concrete proposed amendment in this statement, and that Golden State is aware that the District is only willing to review proposed changes, but does not propose any.

Moreover, when referred to the payment options in the Agreement,⁵⁰ and directly asked whether Golden State plans to propose any additional amendments,⁵¹ Golden State’s witness suggested he is not aware of any.⁵²

Given Golden State’s lack of diligence, the Commission should require Golden State to propose amending the Agreement by extending the payment period in the Agreement to 10 years. DRA respectfully requests that if the District accepts this

⁴⁶ Exhibit D-25, Prepared Testimony of Jasjit Sekhon A.10-01-009, Page 2, Lines 14-17 and 22-25.

⁴⁷ Tr: 485: 22 to 486: 4 (ALJ Long) This was the Decision conditionally approving the Agreement.

⁴⁸ Tr: 486: 5-6 (Pat Scanlon).

⁴⁹ Exhibit G-56 , Prepared Rebuttal Testimony of Patrick Scanlon, Page 4, Lines 4-5.

⁵⁰ Tr: 482: 21-483: 6 (Darryl Gruen)

⁵¹ Tr: 483: 17-18 (Darryl Gruen)

⁵² Tr: 483: 9 (Pat Scanlon).

amendment, that rental payments be spread out and passed on to ratepayers. DRA also supports the Commission's use of a memorandum account to track expenses at a 90 day commercial paper rate,⁵³ if the Commission should see fit to do so.

G. If the District Does Not Agree to a Repayment Term of More Than Five Years, The Commission Should Require Golden State to Select The Five Year Payment Plan Option in the Agreement

If the District does not accept a change to the payment term in the Agreement, the Commission should still require Golden State to opt for the five year payment plan. DRA has recommended that Golden State take advantage of the five-year installment payments currently offered by the district.⁵⁴ This option would also spread out costs to ratepayers.

IV. CONCLUSION

In conclusion, the Commission should require Golden State to keep both Hill Street and Randall Bold Plants out of ratebase to avoid unnecessary rate increases to the already disadvantaged Bay Point community. Also, the Commission should find that the Agreement between District and Golden State does not provide Golden State with an asset. Even if it did, the asset is not intangible. Next, the Commission should find that Golden State's rental of part of Randall Bold Plant from the District is an operating expense.

Related to negotiations with the District, the Commission should require Golden State to diligently request to amend the Agreement to extend payment installments for at least ten years. Finally, if the District does not agree to a repayment term of more than five years, the Commission should require Golden State to select the five year payment plant option in the existing Agreement.

⁵³ DRA notes several questions posed to Golden State about whether it can manage a memorandum account for these expenses. See Tr 511: 2-4 (ALJ Long), Tr 511: 18-23 (ALJ Long), Tr 516: 5-9 (ALJ Long).

⁵⁴ Exhibit D-25, Prepared Testimony of Jasjit Sekhon A.10-01-009, Page 2, Lines 14-16.

Respectfully submitted,

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September 17, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES** to the official service list in **A.10-01-009** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **September 21, 2010** at San Francisco, California.

/s/ Imelda Eusebio

Imelda Eusebio

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