FILED
08-07-12
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

In the Matter of the Application of SAN JOSE WATER COMPANY (U 168 W) for an Order authorizing it to increase rates charged for water service by $47,394,000 or 21.51% in 2013, by $12,963,000 or 4.8% in 2014, and by $34,797,000 or 12.59% in 2015.	Application 12-01-003 (Filed January 3, 2012)

REPLY BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES

RICHARD RAUSCHMEIER
Analyst for
The Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2732
E-mail: rra@cpuc.ca.gov

ALLISON BROWN
Attorney for
The Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-5462
E-mail: aly@cpuc.ca.gov

August 7, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

In the Matter of the Application of SAN JOSE WATER COMPANY (U 168 W) for an Order authorizing it to increase rates charged for water service by $47,394,000 or 21.51% in 2013, by $12,963,000 or 4.8% in 2014, and by $34,797,000 or 12.59% in 2015.	Application 12-01-003 (Filed January 3, 2012)

REPLY BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES

Pursuant to Rule 13.11 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the schedule set forth by Administrative Law Judge Wilson ("ALJ"), the Division of Ratepayer Advocates ("DRA") files its Reply Brief on San Jose Water Company's ("SJWC") General Rate Case ("GRC"). Since SJWC has presented no arguments that could serve to undermine or effectively rebut DRA's recommendations on the remaining litigated issues in this proceeding, DRA will not reiterate the positions it took in its opening brief. DRA's Reply Brief will address only the internal inconsistencies, factual inaccuracies, and mischaracterizations found in SJWC's Opening Brief.

I. INTERNAL INCONSISTENCIES

SJWC's Opening Brief is not only inconsistent with the evidentiary record but is doubly flawed in that it is internally inconsistent in ways that are impossible to reconcile and that serve as further evidence of the unreasonableness of the requested rate increases.

When explaining why its conservation-related expense and capital budgets should be authorized in full, SJWC argues that past conservation "savings may be transitory over the long run and may dissipate, when (or if) more plentiful water supplies return or the economy rebounds."[1] However, two pages later when arguing why the Commission should adopt its forecasted sales numbers, SJWC explains that lower levels of consumption "will be maintained through the forecast period whether or not the increased spending is authorized."[2] Either continued conservation spending will be needed during the forecast period to avoid rebound effects or lowered consumption will be maintained through the forecast period thereby making additional conservation spending unnecessary. To advance both arguments simultaneously as justification for increasing rates defies basic logic. Moreover, neither argument provides a compelling rationale for increasing SJWC's conservation budget.

On page 31 of SJWC's Opening Brief it criticizes DRA for offering "no recommendation for how to implement or fund" the Arc Flash training program. Yet in the very next paragraph SJWC points out that DRA has recommended the funding of three new staff positions, one of which "could be given responsibility for the Arc Flash program."

SJWC's Opening Brief, at page 141, offers one of the more perplexing examples of SJWC's self-contradictory reasoning and internal inconsistency. Here, SJWC unequivocally states that "supplies from SCVWD have been reduced" and "SJWC's surface water supplies are constrained." Incomprehensibly, in the very next paragraph SJWC accuses DRA of being "unable to demonstrate any constraint on SJWC's water production or water supply that justifies denying SJWC a WRAM/MCBA." The Commission should give SJWC's contradictory recommendations little credence.

---

[1] SJWC Opening Brief, p. 7

[2] SJWC Opening Brief, p. 9

II. FACTUAL INACCURACIES

In addition to internal inconsistencies, SJWC's Opening Brief contains factual inaccuracies that contradict the evidentiary record and undermine its case for an 18% rate increase in 2013.

On page 21 of its Opening Brief, SJWC asserts that DRA's exclusion of vacant positions from payroll forecasts is "unjustified." However, DRA's adjustment is consistent with the multiple Commission Decisions that DRA cites in Direct Testimony, which make removal of vacant positions from test year forecasts an all but automatic adjustment.[3] SJWC's attempt to obtain customer funding for these vacant positions is further evidence of the company's overly aggressive attempt to achieve revenues beyond the minimum necessary to provide safe and reliable service. More troubling, however, is SJWC's attempt to introduce never-before-heard evidence in its Opening Brief pertaining to this issue. SJWC's Opening Brief, at page 21, points to a "try out" employee program as explanation for why vacant positions should now be included in test year forecasts; however, SJWC's Direct Testimony does not mention this program. Moreover, SJWC's Rebuttal Testimony is similarly silent about this program. In fact, nowhere in the entire evidentiary record of this proceeding has this explanation ever been considered or verified. SJWC's willingness to cite to extra-record facts underscores the fundamental weakness of its justification for these positions.

On page 57 of its Opening Brief, SJWC incorrectly states "DRA argues that for 2012 and 2013 P&B forecasts, except Post-Retirement Benefits other than Pensions, SJWC applied incorrect escalation factors to arrive at forecasts." This is not accurate. As evidenced by SJWC's own citation to DRA's testimony on this issue, DRA found that SJWC also applied incorrect escalation factors to the forecast of Post-Retirement Benefits other than Pensions. Although DRA's testimony shows that SJWC used a different set of

---

[3] Exhibit DRA-1, p. 3-16 and 3-17 present the conclusions of Commission Decision D.08-01-043, D.05-07-044, D.10-11-035-, and D.08-06-022.

incorrect factors, SJWC used incorrect escalation factors for each and every pension and benefit forecast. DRA corrected these errors and incorporated the correct calculations into the recommendations provided to the Commission.

III. MISCHARACTERIZATIONS

On page 2 of its Opening Brief, SJWC completely mischaracterizes DRA's position by stating that "[f]or DRA, concerns about short-term cost impacts justifies slowing down the pace of pipe replacement, without evident concern for the future spike in pipeline failures that is sure to follow." This is incorrect. DRA actually highlights this future spike multiple times in direct testimony when developing its recommendations.[4] SJWC--by contrast--ignores the future spike in pipeline failures by proposing a flat and unchanging replacement rate that ignores the actual pattern of replacement requirements. In stark contrast to SJWC's proposal, DRA's recommendations reflect a dynamic and prudent approach that acknowledges the future spike in pipeline failures while avoiding the costly and unnecessary replacement of pipes with remaining service lives. While authorized funding of SJWC's requested replacement rates will certainly increase the amount of ratebase on which the company can earn a return in the short term, such approach would not be prudent in addressing the long-term pattern of necessary investment.

On page 7 of its Opening Brief, SJWC charges that in developing its recommendations "DRA appears to have ignored the California Legislature's passage and Governor Schwarzenegger's signature of SBx7-7." However, as evidenced by DRA's numerous and repeated references in direct testimony and cross-examination to the actual requirements of this legislation, SJWC's charge is revealed to be an obvious mischaracterization. In fact, a majority of DRA's recommendations regarding conservation spending and a decoupling WRAM/MCBA mechanism are founded on the

[4] Exhibit DRA-1, p. 8-34, p. 8-36, p. 8-42

requirements and goals established by this legislation. DRA's position on these issues, much like its recommendations on SJWC's requested staffing, capital investments, and expense budgets, demonstrates DRA's commitment to using long-term perspective to ascertain revenue requirements for the three years that comprise SJWC's current rate case cycle.

On page 23 of its Opening Brief, SJWC mischaracterizes DRA's recommendation on the company's requested new positions as relying upon a customer growth calculation "that was included in a settlement agreement in SJWC's last GRC." During evidentiary hearings, DRA made clear that the customer growth calculation was just "one of the factors that DRA considered in projecting number of personnel." DRA also considered "productivity improvements" and the extent to which "San Jose has been doing nontariff activities" with its current workforce.[5]

On page 72 of its Opening Brief, SJWC describes its request for investment in land as "very minor" and a "modest budget." In defending its request to place these amounts in customer rates because the amounts are relatively small, SJWC completely misunderstands and mischaracterizes the standard of review that is required in general rate cases. DRA's well-founded arguments against including these amounts in customer rates cannot be dismissed simply because the amounts that SJWC has requested are small.[6] SJWC exhibits a similar misunderstanding of the review process on page 35 of its brief when it accuses DRA of taking a "nickel and dime" approach in its recommendations to the Commission. At this point, it bears remembering that all of these disputed nickels and dimes combine to form more than a $40,000,000 difference between SJWC's request and DRA's staff recommendations on 2013 customer rates.

---

[5] EH Vol. 3, p. 239, lines 14-21

[6] See Exhibit DRA-1, p. 8-5

IV. CONCLUSION

The second page of SJWC's opening brief identifies the fundamental dividing line that runs between parties' positions as the difference between long-term and short-term focus. DRA agrees. But contrary to the company's short-term focus upon quarterly dividends, DRA's recommendations are based upon long-term data and reasonable expectations of the prudent level of necessary funding. And in determining this level, DRA urges the Commission to rely upon the U.S. Supreme Court definition that has been repeatedly referenced in past Commission decisions:

> The United States Supreme Court has broadly defined the revenue requirement of utility companies as being the minimum amount which will enable the company to operate successfully, to maintain its financial integrity, and to compensate its investors for risk assumed.[7]

Through testimony, evidentiary hearings, and briefs, DRA has demonstrated that SJWC's requests are internally inconsistent, cite extra-record materials as justification, and rely on forecasts that are not credible. For all of the reasons stated, the Commission should adopt DRA's recommendations.

---

[7] D.92366 (1980) 4 CPUC 438; D.86794 (1976) 81 CPUC 53;

Respectfully submitted,

/s/ ALLISON BROWN

____
Allison Brown

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-5462
Fax: (415) 703-2262

August 7, 2012