



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**

10-27-09  
04:59 PM

In The Matter Of The Application Of San Gabriel Valley Water Company (U337W) For Authority To Establish A Conservation Rate Design, Including A Water Revenue Adjustment Mechanism, Modified Cost Balancing Account, And Conservation Memorandum Account In Compliance With Decision No. 08-06-022

Application No. 08-09-008  
(Filed September 10, 2008)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES  
OPPOSING SAN GABRIEL VALLEY WATER COMPANY'S MOTION FOR  
AUTHORIZATION TO OPEN A MEMORANDUM ACCOUNT**

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October 27, 2009

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COMPANY'S MOTION FOR AUTHORIZATION TO OPEN A  
MEMORANDUM ACCOUNT**

**I. INTRODUCTION**

The Division of Ratepayer Advocates ("DRA") hereby files these reply comments opposing San Gabriel Valley Water Company's ("SGVWC") motion for authority to establish a memorandum account pursuant to ALJ Weatherford's statements at the prehearing conference on September 15, 2009,<sup>1</sup> and in the evidentiary hearing.<sup>2</sup>

On August 14, 2009, SGVWC filed a motion for authorization to establish a memorandum account to track its legal and related costs of participating in this proceeding including outside attorneys' fees, costs of public notices, travel costs, and other "out of pocket" costs<sup>3</sup> as well as costs of preparing and filing A.08-09-

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<sup>1</sup> "DRA is reserving the option to make its own comments in connection with the filing of briefs." ALJ Weatherford, prehearing conference transcript pg. 39, lines 3-5.

<sup>2</sup> "DRA has the opportunity to file comments in conjunction with its opening brief." ALJ Weatherford, evidentiary hearing transcript pg. 278, lines 26-27.

<sup>3</sup> Motion of SGVWC for Authority to Open a Memorandum Account, pg. 1.

008.<sup>4</sup> DRA filed a response to SGVWC's motion on August 31, 2009. Subsequently, ALJ Weatherford held a prehearing conference on the issue on September 15, 2009. During the prehearing conference, ALJ Weatherford explained that he planned to rule on the motion as part of the Proposed Decision in A.08-09-008, so the final disposition of the motion will be the Commission's.<sup>5</sup> ALJ Weatherford provided further direction that a positive finding on each and every prong of the Commission's four-pronged test for memorandum accounts<sup>6</sup> is necessary for the Commission to approve establishing a memorandum account for these expenses.<sup>7</sup> He also questioned whether SGVWC had met its burden of proof that a factual predicate for each prong exists.

SGVWC filed comments on September 25, 2009 in support of its motion for authorization to open a memorandum account. SGVWC's filing did not provide new facts or evidence in its comments that show that its requested memorandum account meets the Commission's four-pronged test. DRA will not repeat the same arguments it made in its response to the motion of SGVWC for authority to open a memorandum account in these comments, and incorporates that document by reference here. However, DRA continues to support the statements it made in its response to the motion of SGVWC for authority to open a memorandum account on August 31, 2009. Here, DRA provides responses to information in the "Comments of San Gabriel Valley Water Company In Support of Motion For Authorization To Open A Memorandum Account" in order to expand the factual record on this issue.

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<sup>4</sup> Motion of SGVWC for Authority to Open a Memorandum Account, pg. 9.

<sup>5</sup> Prehearing conference transcript, September 15, 2009, Pg. 21, lines 21 – 24.

<sup>6</sup> The Commission's four-pronged test is articulated in Resolution W-4276,.D.02-08-054, D.04-06-018 and Standard Practice U-27-W.

<sup>7</sup> Prehearing conference transcript, September 15, 2009, pg. 22 lines 25-27.

## **SGVWC'S FILINGS DO NOT SATISFY THE COMMISSION'S FOUR-PRONGED TEST**

SGVWC continues to fail to satisfy each prong of the Commission's four-pronged test for establishing memorandum accounts as described below.

### **Prong 1: the expense is not caused by an event of an exceptional nature that is not under the utility's control**

SGVWC had ample notice that the Commission may require it to address increasing block rates in an application separate from the GRC. The Commission's requirement to do this in Decision 08-06-022 is not (in any sense) an event of an exceptional nature. SGVWC originally included a proposal to address increasing block rates in its Water Action Plan application in August 2007, which was not part of a GRC (A.07-08-017).<sup>8</sup> Thus, at that time, SGVWC could not have been unaware that the Commission had the choice to include the topic of increasing block rates in that application.<sup>9</sup> The timeline is discussed in detail below.

### **Prong 2: SGVWC should have reasonably foreseen the expense in the Fontana Water Company GRC (A.08-07-009)**

SGVWC makes the timeline sound very complex by writing almost four pages about it and presenting a three page chronology of events. However, presenting a lot of information about timelines does not change the simple fact that SGVWC knew the Commission was going to require SGVWC to file this application before it filed its last GRC. The Commission issued D.08-06-022 ordering SGVWC to file this application on June 13, 2008, and issued a proposed

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<sup>8</sup> Prepared Testimony of Daniel A. Dell'Osa, Application 07-08-017, August 2007.

<sup>9</sup> The Commission ultimately removed increasing block rates from the scope of that proceeding via the Scoping Memo and Ruling of Assigned Commissioner, 1/22/08, in proceeding A.07-08-017

decision stating this on April 14, 2008.<sup>10</sup> Both these dates were before SGVWC filed its Fontana Water Company (“Fontana”) GRC on July 1, 2008. Thus, the expenses associated with participating in this proceeding should have been reasonably foreseen in the Fontana GRC.

Upon close examination of the timeline of events presented by SGVWC, DRA noted some significant dates that SGVWC omitted from its Chronology of Events that show that SGVWC should have reasonably foreseen the expense in its GRC. In particular, in August 2007, in its Water Action Plan application (A.07-08-017), SGVWC included its proposal for Increasing Block Rates in the testimony of Dan Dell’Osa.<sup>11</sup> While Increasing Block Rates were ultimately excluded from the scope of the Water Action Plan application by the Scoping Memo,<sup>12</sup> the fact that SGVWC included it in its application and testimony illustrates that SGVWC knew at the time that it was going to have to address Increasing Block Rates in a proceeding before the Commission. Furthermore, the Water Action Plan application was submitted separately from a GRC filing. Dan Dell’Osa’s testimony from August 2007, stated that “The Commission’s December 2005 Water Action Plan requires water utilities to address Increasing Block Rates in its General Rate Cases.” This statement illustrates that SGVWC knew upon reading the Water Action Plan in 2005 that it was going to have to address increasing block rates in future GRC applications. Since Increasing Block Rates were not addressed in SGVWC’s Los Angeles Division and General Division GRC application (A.07-07-003) or its Fontana Water Company Division GRC application (A.08-07-009), but SGVWC knew it would have to address them

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<sup>10</sup> The proposed decision of ALJ Galvin included the statement that the Commission will direct SGVWC to file a conservation rate design application (pg. 27) and also included ordering paragraph 12 which contains exactly the same language that was ultimately incorporated into the final decision. San Gabriel did not mention any objection or alternative to this requirement in its comments or reply comments on the proposed decision.

<sup>11</sup> The proposal, which was to not implement increasing block rates, was later excluded from the scope of the proceeding, by the Scoping Memo and Ruling of Assigned Commissioner, 1/22/08.

<sup>12</sup> Scoping Memo and Ruling of Assigned Commissioner, 1/22/08, in proceeding A.07-08-017.

in a separate application that might, or might not, be consolidated with the OII, San Gabriel obviously knew that the Commission would require them to submit increasing block rate proposals.<sup>13</sup> While San Gabriel may not have known whether or not this application would be consolidated with the OII, it knew before filing its FWC GRC that it would have to address these issues, and it might have, or at least could have, increased its requested regulatory budget if necessary to cover the costs of this application.

**Prong 3: The expense is not of a substantial nature in the amount of money involved.**

SGVWC now estimates that its costs for this proceeding will approach \$200,000,<sup>14</sup> which it states is a comparable amount to that incurred by Suburban Water Systems. However, SGVWC's memorandum account is not similar to Suburban Water Systems' account and so, this comparison is not relevant. Unlike San Gabriel, Suburban Water Systems ("Suburban") sought memorandum account treatment in its application<sup>15</sup> for the legal and related expenses. Another difference is that DRA reached a settlement with Suburban on the prospective expenses associated with implementation of the increasing block rates.

SGVWC states that \$15,000 per year is reflected in SGVWC's rates companywide for non-GRC regulatory expense. However, this is irrelevant because, as SGVWC is well aware, regulatory expenses reflect a negotiated amount from the GRCs for each of SGVWC's divisions.<sup>16</sup> DRA reached a

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<sup>13</sup> D.08-06-022, OP 13 "13. SGV shall file a conservation rate design application, including a Water Revenue Adjustment Mechanism, modified cost balancing account and conservation memorandum account proposals, for its LA and Fontana Divisions within 90 days of issuance of this decision. That application shall be coordinated with its Fontana Division's July 2008 GRC application and may be consolidated with Investigation 07-01-022."

<sup>14</sup> Comments of SGVWC in support of motion for authorization to open a memorandum account, September 25, 2009, Pg. 8.

<sup>15</sup> A.06-11-010, Kelly Direct testimony, 11/22/06, pg. 9.

<sup>16</sup> Also, SGVWC does not provide any support for this amount, and the settlements portray only a total number for regulatory commission expenses each year.

settlement regarding Commission regulatory expenses with SGVWC in its Los Angeles and General Division GRC (A.07-07-003, adopted in D.08-06-022, ordering paragraph 1) and also reached a settlement with SGVWC in its Fontana Division GRC (A.08-07-009, D.09-06-027 adopts the settlement, ordering paragraph 1).

The Commission examines regulatory expenses in the GRC in the context of the budget of the entire division. After parties issued testimony in each of SGVWC's GRCs, the parties engaged in confidential settlement negotiations that involved a process of bargaining; SGVWC may have made concessions on its regulatory budget in exchange for a larger budget elsewhere. At the end of the GRC, SGVWC is not limited to spending in each category in accordance with the authorized budget in the GRC during the rate case cycle. SGVWC can spend more in one category and less in another category within its total revenue requirement. For the most part, its budget is viewed as a whole.<sup>17</sup> This process is typical for prospective ratemaking. In contrast, if SGVWC has the opportunity to effectively undermine the settlement agreement it reached with DRA by seeking recovery of its actual incurred expenses *post hoc*, the GRC process becomes more a form of guidance than an effective constraint on utility expenses. In this regard, SGVWC's assertion that it needs a memorandum account in order to be "provided the opportunity to recover in the future all of its unavoidable, substantial, unforeseeable, and reasonable costs incurred as a result of the Commission requiring this application to be filed"<sup>18</sup> is false and misleading. SGVWC is collecting its revenue requirement determined in the context of the GRC. The \$200,000 it is seeking to recover via this memorandum account is equivalent to

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<sup>17</sup> Except in specific instances such as the Fontana Water Company's one-way balancing account for conservation expenses authorized in D.08-08-018 in A.07-08-017.

<sup>18</sup> Comments of SGVWC in support of motion for authorization to open a memorandum account, Pg. 3

approximately 0.19 percent of SGVWC's total revenue requirement (\$200,000/(\$51,561,263<sup>19</sup> + \$53,493,219<sup>20</sup>)), i.e., is not of a substantial nature.

**Prong 4: The ratepayers will not benefit from the memorandum account treatment.**

SGVWC argues in its comments that ratepayers will benefit from memorandum account treatment because the Commission and DRA have an opportunity to conduct a reasonableness review of the costs that are accrued in the account. However, DRA questions the reasonableness of all of these costs given the larger goal of this proceeding – to encourage water conservation through price signals. SGVWC estimates it has spent approximately **\$200,000** on legal and consulting costs in this proceeding to develop an increasing block rate design that is so *de minimis* that it is likely to be unnoticeable by customers. Meanwhile, SGVWC spent only **\$37,483.26** between August 21, 2008 and June 30, 2009 on actual conservation programs in its Fontana Water Company Division, although it was authorized to spend \$261,548 on conservation programs during this period.<sup>21</sup>

If the Commission authorizes SGVWC's requested memorandum account, it will essentially reward SGVWC for misallocating resources. Thus approving SGVWC's request for a memorandum account would unwittingly provide a perverse incentive to SGVWC and discourage water conservation. This type of incentive will not benefit ratepayers.

## **II. CONCLUSION**

SGVWC's proposed memorandum account continues to fail to meet all four prongs of the Commission's test for memorandum accounts and should be denied.

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<sup>19</sup> SGVWC's revenue requirement for its Los Angeles Division, Advice Letter 372, filed 5.14.2009.

<sup>20</sup> SGVWC's revenue requirement for its Fontana Water Company Division, D.09-06-027.

<sup>21</sup> Advice Letter 377, submitted September 4, 2009, pg. 2.

Respectfully submitted,

/s/ ALLISON BROWN

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October 27, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**REPLY  
COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES  
OPPOSING SAN GABRIEL VALLEY WATER COMPANY’S MOTION  
FOR AUTHORIZATION TO OPEN A MEMORANDUM ACCOUNT**” in  
**A.08-09-008** by using the following service:

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

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Executed on October 27, 2009 at San Francisco, California.

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/s/ IMELDA C. EUSEBIO  
Imelda C. Eusebio

**N O T I C E**

Parties should notify the Process Office, Public Utilities  
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