

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



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In the Matter of the Application of )  
SAN GABRIEL VALLEY WATER COMPANY )  
(U337W) for Authority to Increase Rates Charged )  
for Water Service in its Fontana Water Company )      Application 05-08-021  
Division by \$5,662,900 or 13.1% in July 2006; )      (Filed August 5, 2005)  
\$3,072,500 or 6.3% in July 2007; and by \$2,196,000 )  
or 4.2% in July 2008. )

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Order Instituting Investigation on the )  
Commission's Own Motion into the Rates, )      Investigation 06-03-001  
Operations, Practices, Service, and Facilities of )      (Filed March 2, 2006)  
San Gabriel Valley Water Company )  
(Utilities 337 W). )

**REPLY COMMENTS OF SAN GABRIEL VALLEY WATER COMPANY  
ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BARNETT**

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March 7, 2007

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ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BARNETT**

Pursuant to Rule 14.3, San Gabriel Valley Water Company (“San Gabriel,” “Company,” or “SGV”) hereby respectfully submits its reply comments on the Proposed Decision (“PD”) of Administrative Law Judge (“ALJ”) Barnett, responding to the opening comments of the Division of Ratepayer Advocates (“DRA”), the City of Fontana (“City”), and Fontana Unified School District (“FUSD”). In accordance with ALJ Barnett’s e-messages of February 28 and March 5, 2007, extending the deadline for filing reply comments by two days, these comments are timely filed.

A. DRA and the City Wrongly Criticize the APD for Recognizing the Uncertainty of Facilities Fees.

DRA and the City both favor facilities fees, but object to the PD’s Finding of Fact 66, which states:

Given the uncertainty and volatility of real estate development, the revenue that a facilities fee would generate is highly uncertain both in amount and timing. Facilities fee revenue should be taken into account for ratemaking purposes once they have been received, through an advice letter.

DRA Comments on PD, at 2-3; City Comments on PD, at 1-2. DRA contends that the advice letter process is unnecessary because San Gabriel and DRA did not disagree on the number of new customers in the Test Year and argues that the APD’s acceptance of the estimate of 1,350 new connections per year to project general water revenues justifies using the same estimate for facilities fees. DRA Comments on PD, at 3; *see also*, City Comments on PD, at 2.

Estimating 1,350 new connections per year to project test year sales certainly does not mean San Gabriel agreed to use that estimate to project the amount of facilities fees. San Gabriel never agreed to such an approach, because it is unnecessary and speculative. The PD's better solution eliminates the guesswork and instead relies on the amount of facilities fees actually collected.

An error in the estimate of new connections will have far greater impact on the amount of facilities fees than on general water revenues. For example, if new connections prove to be 20% lower than projected (1,080 instead of 1,350), general water revenues will be off by about \$150,000 but the shortfall of facilities fees will be at least \$1,350,000. Thus, projecting facilities fees in base rates would unnecessarily expose San Gabriel's revenues and earnings to increased volatility. This is precisely why the PD, appropriately, provides for recording the actual amount of facilities fees in a memorandum account and adjusting rates by advice letter for facilities fees actually received.

San Gabriel, DRA, and the City agree that rate base increases should be offset by (and concurrent with) contributions from facilities fees. *See*, DRA Comments on APD, at 4; City Comments on PD, at 2. Having San Gabriel reflect Sandhill upgrade investments and facilities fees in rates through the same advice letter filings accomplishes that goal. *See*, SGV Comments on PD, at 19-20 and App. A, proposed O.P. 2B; *see also*, SGV Comments on APD, at 19-20..

**B. The City Misstates the Record Regarding the Sandhill Upgrade Project.**

While acknowledging that upgrading Sandhill is a \$35 million project, the City also claims San Gabriel's master plan indicates that "Sandhill when completed will cost \$77 million." City Comments on PD, at 4. This is a misstatement of the record. As San Gabriel's Vice President – Engineering testified, the \$77.8 million figure was simply a sum of numbers mentioned in the Master Plan, but it is *not* the estimated cost of the plant San Gabriel plans to build. Tr. 228:9-232:16 (LoGuidice/SGV). The City also falsely claims that the "purported rationale for Sandhill has shifted." City Comments on PD, at 4. In fact, the "rationale" for the Sandhill upgrade project is and has always been the same – to maximize baseload use of Lytle Creek surface flows when available, as they are the most economical source of water for the Fontana Water Company division. *See*, SGV Reply Brief, at 18.

**C. DRA Wrongly Asserts That Recovery of the WQLMA Balance Should Be Deferred.**

The PD would allow San Gabriel to amortize the balance in its Water Quality Litigation Memorandum Account ("WQLMA"). DRA contends that "applicable Commission precedent" calls for deferring recovery of this expense until "final resolution of the litigation," in order to avoid

“intergenerational inequity issues.” DRA Comments on PD, at 4. DRA also sees the allowance of prompt cost recovery by advice letter as “contradictory,” because the PD would allow such recovery but also provide for continued accrual and amortization in the next rate case. *Id.* at 5.

DRA misunderstands the normal use of a memorandum account. It is entirely appropriate to provide for recovery in rates of the recorded balance in such an account as of a particular date through amortization over an appropriate period of time. This is precisely what the Commission did with the WQLMA in the last Fontana Water Company division GRC. See, D.04-07-034, at 62-63, 73 (O.P. 12). Then, from the date the balance has been “zeroed out,” further water quality litigation costs are recorded in the WQLMA as they accrue, subject to potential recovery in the next GRC. That is just the procedure contemplated by the PD.

While DRA refers to “applicable Commission precedent” to the contrary, DRA fails to cite any such precedent. As just indicated, the most relevant precedent, D.04-07-034, is fully consistent with the PD’s approach, except that relevant precedent also supports San Gabriel’s suggestion for amortizing a more current recorded balance – as of February 28, 2007 rather than June 30, 2006.

D. DRA Wrongly Calls for Removal of the PD’s Specific Findings on the Necessity of Certain Plant Additions.

DRA criticizes the PD for stating that new reservoirs are needed to serve proposed new wells and for finding the Master Plan reasonable in concluding that new wells are needed. DRA considers these statements inconsistent with the PD’s conclusion that decisions as to what plant to construct should be left to utility management. DRA Comments on PD, at 6.

There is no contradiction here. It is entirely consistent for the PD to make findings about the need for particular classes of plant, while leaving to management discretion the determination precisely what new plant to build and when. In fact, the PD proceeds directly from its conclusion not to dictate “which plant will be constructed in which order,” to a discussion of the “need for various infrastructure improvements.” PD, at 34 *et seq.* DRA has shown no error in this approach, and there is none.

E. DRA and the City Wrongly Call for Reopened Hearings to Review Plant Built Since 2002.

At this late date, DRA and the City want to reopen evidentiary hearings to review the reasonableness of plant San Gabriel constructed since 2002. They claim to have learned this GRC provided a forum for such review only when that point was noted in D.06-06-036, on rehearing of issues initially resolved in D.04-07-034. DRA Comments on PD, at 7; City Comments on PD, at 5.

However, DRA's and the City's decision to devote little attention to this issue does not, by any stretch of imagination, support their claim that the parties had no opportunity to do so.

DRA and the City point to the Scoping Memo in this proceeding as not having specified that projects constructed since 2002 would be subject to review. DRA Comments on PD, at 7; City Comments on PD, at 6. The Scoping Memo did not need to do so. It goes without saying that potential issues in any GRC include the reasonableness of the utility's investments in plant since the last recorded year considered in the prior GRC. The fact that DRA and its consultants did not devote more attention to this issue supports the conclusion that they did not see sufficient grounds to challenge the Company's past investments.<sup>1</sup> This probably explains the silence of the City's witnesses on this subject (they certainly felt no constraints on other issues). There is no good cause for reopening the evidentiary record at this late date – and certainly no deficiency in the PD to warrant doing so.

F. The City's Assertions of Improper Record Keeping Are Completely Unwarranted.

The City seeks to expunge the statement in the PD's Finding of Fact 82 that the "records San Gabriel kept were adequate to show the receipt of funds and the expenditure of funds." City Comments on PD, at 8. In support of this request, the City offers only a series of already discredited assertions about the Company's record keeping. *Id.* at 6-9. In fact, San Gabriel followed the mandate of Section 790 by treating the net proceeds of property sales, a contamination settlement, and involuntary conversions as its "primary source of capital" for investment in utility infrastructure, and the PD expressly found that San Gabriel has maintained detailed records documenting those investments. *See*, PD, at 121 (Finding of Fact 80).

G. The City's Call for a Rate of Return Penalty Also Is Completely Unwarranted.

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<sup>1</sup> In reply comments on the draft decision on rehearing issues filed in June 2006, San Gabriel noted it had presented evidence in this GRC regarding "post-2002 projects" included in Utility Plant in Service for years 2003 through 2005. *See*, Exhibit 1 (LoGuidice/SGV), Tables 8A, 8B. The Master Data Request requires DRA to tour the utility's system, including "plant that has been installed and constructed since the last [GRC]." DRA conducted such a tour and reviewed San Gabriel's evidence, comparing budgeted and actual plant additions over at least the last six years. *See*, Exhibit 45 (Schultz/DRA), at 8-1 to 8-3. DRA and other parties had ample notice that inclusion of this plant in rate base could be challenged in this GRC. The Commission made this opportunity clear in the prior GRC decision:

When the Commission approves a projection of plant additions in setting rates, there is a presumption that the utility's investment in the planned capital projects is reasonable. However, this does not bar staff from challenging the inclusion of such investments in rate base in a subsequent proceeding, once the investments have been made. The same rule should apply if the Commission sets a cap on rate base additions instead of approving a specific set of projects.

D.04-07-034. at 13-14. The Commission should give no credence to the City's and DRA's repeated protests of ignorance about this standard procedure for rate case review.

The City closes its comments by calling for imposition of a rate of return penalty on San Gabriel, alleging that “well justified findings” almost compel the PD to assess that alternative. City Comments on PD, at 9-10. The City does not identify any particular findings, but apparently refers to Findings of Fact 86, 87, and 88, relating to San Gabriel’s purchase of land for a new headquarters complex from an affiliate, Rosemead Properties Inc. *See*, PD, at 121-22. San Gabriel already has thoroughly addressed the flaws in these findings and in the PD’s (and APD’s) proposed imposition of penalties for violation of a never identified rule. *See*, San Gabriel Comments on PD, at 8-17. For all the reasons stated there, imposition of a rate of return penalty is equally unwarranted.

H. Conclusion

As shown above, the changes to the PD proposed in the comments of DRA and the City are unwarranted and unsupported. Accordingly, San Gabriel respectfully urges the Commission, should it choose to employ the PD as the vehicle for its decision, to modify the PD only in the manner and to the extent San Gabriel proposed in its own opening comments on the PD.

Respectfully submitted,

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March 7, 2007

**CERTIFICATE OF SERVICE**

I, Jeannie Wong, hereby certify that on this date I will serve the foregoing REPLY COMMENTS OF SAN GABRIEL VALLEY WATER COMPANY ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BARNETT, on the parties on the service list for A.05-08-021/I.06-03-001 below.

**By electronic mail:**

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Executed this 7<sup>th</sup> day of March, 2007 in San Francisco, California.

/S/ JEANNIE WONG

Jeannie Wong