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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION OF GOLDEN STATE WATER COMPANY (U 133 W) FOR AUTHORITY TO IMPLEMENT CHANGES IN RATESETTING MECHANISMS AND REALLOCATION OF RATES FOR ITS REGION I SERVICE AREA	**A.08-09-010**

COMMENTS OF GERALD TRIMBLE ON THE SETTLEMENT AGREEMENT BETWEEN GOLDEN STATE WATER COMPANY AND THE DIVISION OF RATEPAYER ADVOCATES

1. INTRODUCTION AND RECOMMENDATION

Pursuant to Rule 12.2 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Gerald Trimble submits these comments on the December 11, 2008 settlement (*proposed settlement*) between Golden State Water Company (GSWC) and the Division of Ratepayer Advocates (DRA).

Elements of the *proposed settlement*, which wholly contradict directives of Decision 08-08-030 of August 21, 2008 as well as the adopted Settlement of October 19, 2007 must be modified in order to abide by Commission instructions, as required.

2. BACKGROUND

Decision 08-08-030 of Proceeding I.07-01-022 dictated the necessity of this proceeding. It also issued directives regarding the objectives of this proceeding, both directly and implied via the adoption of the Settlement of October 19, 2007.

A protest to Application 08-09-010 filed by Trimble on October 7, 2008 questioned the authority of elements of the October 19, 2007 settlement agreement from Proceeding I.07-01-022 to apply to Proceeding A.08-09-010 when not expressly decreed in Decision 08-08-30, as Rule 12.5 of the Commission's Rules of Practice and Procedure provides:

> "*Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding*."

However, in the A.08-09-010 prehearing conference, ALJ Lakritz ruled that the WRAM/MCBA mechanism as agreed to by GSWC and DRA in a settlement of October 19, 2007, such settlement being adopted by D.08-08-030, authorized the WRAM/MCBA[1] for this proceeding.

Trimble then communicated by letter to Commissioner Bohn and ALJ Lakritz arguments concerning that ruling, based on Rule 12.5 of the Commission's Rules of Practice and Procedure, and filed and served the notice of ex parte communication dated November 11, 2008 (filing date of November 12, 2008).

No change in that ruling resulted, thereby confirming the authority and precedence of the Settlement of October 19, 2007, regarding elements of agreement therein, being unquestionably applicable to this proceeding.

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[1] Water Revenue Adjustment Mechanism/Modified Cost Balancing Account

On November 19, 2008, Trimble provided parties Poirier, Yanney and Switzer with a twelve-page note outlining significant issues and requirements for discussion in the settlement conference of November 21, 2008. That same day a draft of a settlement between GSWC and DRA was received by Trimble from GSWC.

A settlement conference was held on November 21, 2008 with all parties present in person or telephonically.

A motion was jointly filed on December 11, 2008 by GSWC and the DRA to adopt the *proposed settlement*.

3. DISCUSSION

This *proposed Settlement* wholly disregards not only specific directives of Decision 08-08-030 of August 21, 2008 but also stipulations of the Commission-adopted Settlement of October 19, 2007.

3.1 DISREGARDED COMMISSION DIRECTIVES

A. The Commission-adopted Settlement of October 19, 2007 stipulates that the non-residential and residential designs will share the same rate design and tariff schedule, as directly stated below[2]:

> *3. Region I residential and non-residential customers will share the same conservation rate design and tariff schedule.*

[2] Settlement of October 19, 2007 Page 4 Section IV-B-3

The *proposed Settlement* completely disregards that clear and exacting directive, as directly shown below[3]:

> *I. For Bay Point, Los Osos, Santa Maria, and Simi Valley, customers are classified as residential or non-residential and will have different tariff schedules.*

B. Decision 08-08-030 of August 21, 2008 states the conservation rate design for Region I will be consistent with those proposed for Region II and III (two-tier designs)[4]:

> *Within 90 days after the Region I GRC decision issues, GSWC will file an application proposing revised conservation rates in a manner consistent with those proposed for Regions II and III in this settlement.*

The conservation rate design proposed for Regions II and III were two-tier increasing block rates as noted in Decision 08-08-030 of August 21, 2008[5]:

> *3. GSWC's proposed residential conservation rate design for Regions II and III consists of two-tier increasing block rates ……*

The *proposed Settlement* wholly disregards that directive[6]:

> *a. For residential customers, the proposed conservation rates consist of a reduced service charge and increasing block rate with three tiers.*

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[3] Proposed Settlement of December 11, 2008 Page 4 Section IV-B-1
[4] D.08-08-030 Page 7, last ¶ as well as October 19, 2007 Settlement Page 5 Section IV-D-3-a
[5] D.08-08-030 Page 38 Finding of Fact #3
[6] Proposed Settlement of December 11, 2008, Page 3, Section IV-A-3-a

3.2 THE NON-RESIDENTIAL RATE DESIGN COMMITMENT

The sharing of a common conservation rate design and tariff schedule between residential and non-residential customers in the settlement of October 19, 2007 was clearly intended and is corroborated throughout Decision 08-08-030 and the settlement of October 19, 2007.

A strong parallel exists between the GSWC/DRA Region II and III commitments and the Region I commitments, a virtual mirror of one another in fact, in the Settlement of October 19, 2007.

For Regions II and III, the Settlement of October 19, 2007 adopted an **interim** non-residential flat rate[7]:

> 2. *The Parties propose an interim conservation rate design for non-residential customers in Regions II & III consisting of a reduced service charge and a uniform quantity charge (a single quantity/volumetric rate) that recovers a greater percentage of fixed cost than the single quantity/volumetric rate that would result from the standard rate design currently in place consistent with the following:.*
> a. *The amount of fixed cost moved to the quantity charge will be based on the bill impact to customers in each service area.*
> b. *Service charges will be reduced by approximately 5% to 10%, with corresponding increases in the quantity rate to achieve revenue recovery neutrality.*
> c. *Service charge reduction shall be calculated to achieve no more than a 10% increase in the quantity rate for either of the two non-residential customer quantity rate groupings.*

It also provided the reasoning for resorting to this **interim** non-residential flat rate as a temporary alternative[8]:

> 1. *The Parties agree that the conservation rate design proposed for residential customers is currently not feasible for non-residential customers for the following reasons:*
> a. *Requires reclassification of customers.*

[7] Settlement of October 19, 2007 Page 8 Section IV-F-2
[8] Settlement of October 19, 2007 Page 8 Section IV-F-1

> *b. Reclassification will require customer and consumption data not available at this time.*

However, Decision 08-08-030 required tiered block rates to be proposed for non-residential consumers for Regions II and III in the next GRC[9], further clarifying and conclusively defining the earlier non-residential flat rate as in fact only interim, as in temporary, nonpermanent, intended to be soon-modified to follow instructions and guidelines previously set. The language following is in no way unclear, ambiguous or loosely approximated.

> *We will require GSWC to propose increasing block rates for its nonresidential customers in its next GRC.*

In comparison, see Region I, where the Settlement of October 19, 2007 <u>also agreed</u> to adopt an **interim** non-residential flat rate[10]:

> *2. For the Bay Point, Los Osos, Santa Maria and Simi Valley service areas in Region I, the Parties propose an interim conservation rate design consisting of a reduced service charge and a uniform quantity charge (a single quantity/volumetric rate) that recovers a greater percentage of fixed cost than the single quantity/volumetric rate that would result from the standard rate design currently in place.*
>
> > *a. The proposed interim conservation rates would apply to residential and non-residential customers.*
> > *b. The proposed interim conservation rate design meets the requirements of the California Urban Water Conservation Council's ("CUWCC") Best Management Practices (BMP) 11.*

On the same page, GSWC commits to filing an application following the GRC proposing Region I <u>revised</u> conservation rates to replace the **interim** rates, as per prior agreement[11]:

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[9] D.08-08-030 - Page 13 first paragraph
[10] Settlement of October 19, 2007 Page 5 Section IV-D-2
[11] Settlement of October 19, 2007 Page 5 Section IV-D-3

> *3. Within 90 days of the resolution of the pending Region I GRC, GSWC shall file an application proposing revised conservation rates to replace the interim conservation rates for the Bay Point, Los Osos, Santa Maria and Simi Valley service areas in Region I, as proposed in this settlement.*
>
> *a. The application shall propose conservation rates in a manner consistent with those proposed in this settlement.*
>
> *b. With respect to its application, GSWC will evaluate if more fixed charges can be moved to the quantity charge consistent with conservation rates proposed in this settlement.*

The relationship to exist between Region I residential and non-residential revised conservation rates had been clearly noted in the adopted Settlement of October 19, 2007[12]:

> *3. Region I residential and non-residential customers will share the same conservation rate design and tariff schedule.*

This relationship was consistent with the Commission directive for Regions II and III (as opposed to using different rate designs for non-residential and residential customers as in the *proposed settlement)*[13]:

> *We will require GSWC to propose increasing block rates for its nonresidential customers in its next GRC.*

For Region I, even GSWC's application confirmed that intent to implement interim rates prior to GRC A.07-01-009 and conservation rates after the GRC[14]:

> *As for Region I, the parties proposed an interim conservation rate design of a reduced service charge and an increased uniform quantity charge for all customers in the Region I ratemaking districts of Bay Point, Simi Valley, Los Osos, and Santa Maria. The parties also agreed that evaluations of further*

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[12] Settlement of October 19, 2007 Page 4 Section IV-B-3

[13] D.08-08-030 - Page 13 first paragraph

[14] Application, Page 3, last paragraph

> *reductions to the service charge and implementation of conservation rates for customers in those ratemaking districts would be delayed until the resolution of the pending Region I general rate case ("GRC").9*

This application, now (over a year later) repeats the same too-convenient and wholly unsupported justification to avoid a non-residential conservation tiered rate design[15]:

> *1. The Parties agree that the conservation rate design proposed for residential customers is currently not feasible for non-residential customers for the following reason:*
>
> *a. Requires reclassification of customers. The latter reclassification will require customer and consumption data which are not available at this time.*

The *proposed settlement* instead submits <u>only</u> <u>revised</u> **interim** flat conservation rates for non-residential customers. GSWC has arbitrarily disregarded the Commission's clear and unarguable directive to submit shared two-tiered non-residential conservation rates.

3.3 THE RESIDENTIAL RATE DESIGN COMMITTMENT

The Application's planned two-tier design was consistent with those proposed in the Settlement of October 19, 2007 and was neutral in rate impact[16] while the three-tier design, with simply an added top tier, increases residential rates by 3.26%[17]. The non-residential flat rate is not similarly increased, thereby indiscriminately and unfairly penalizing residential consumers to the obvious advantage of the non-residential.

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[15] Proposed Settlement of December 11, 2008 Page 7 Section IV-E-1
[16] Application page 19 next to last ¶
[17] Application page 19 last ¶

The achievement of a revenue-neutral result was unequivocally emphasized in the Settlement of October 19, 2007 as follows[18]:

> *iii. The tiered rates were designed to be revenue neutral, ensuring that the proposed two-tier rates will result in a sales revenue that is within 1% of what a single quantity rate generates given the same amount of fixed and variable costs allocated to the volumetric charges.*
>
> *b. Service charges will be reduced by approximately 5% to 10%, with corresponding increases in the quantity rate to achieve revenue recovery neutrality.*

GSWC admits over-collections are likely in its application[19] and falls back on the WRAM to refund such, completely ignoring the noted and clearly stated goal of revenue neutral tiered rates.

Further, GSWC, in its application, distorts facts and misleads by implying that over-collections are a result of conservation[20]:

> *In addition, if over-collection results under the three-tier rate proposal and customers do receive a surcredit, such refund will send a message to customers that they are being rewarded for their conservation efforts and may motivate them to conserve further.*

GSWC then argues that a three-tier rate design is justified by Executive Order S-06-08 by the California Governor on June 4, 2008, in part:

> ***IT IS FURTHER STRONGLY ENCOURAGED*** *that local water agencies and districts work cooperatively on the regional and state level to take aggressive, immediate action to reduce water consumption locally and regionally for the remainder of 2008 and prepare for potential worsening water conditions in 2009.*

While the governor eloquently and so rightly stated the necessity of cooperation, and certainly a more intense focus on conservation by the

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[18] Settlement of October 19, 2007 Page 7 Section IV-E-2-e-iii & Page 7 Section IV-F-2-b
[19] Application 08-09-010, Pages 19 and 20
[20] Application 08-08-010, Page 20, paragraph 3, last sentence

water's "guardian", what GSWC has done does not even reflect well on the Governor's Executive Order, but flies in the face of it as uncooperative and even non-conservationist.

GSWC's legal obligations are to respond to directives mandated by the Commission, which in this case was that directive (repeated) as follows[21]:

> *Within 90 days after the Region I GRC decision issues, GSWC will file an application proposing revised conservation rates in a manner consistent with those proposed for Regions II and III in this settlement.*

That conservation rate design proposed for Regions II and III were two-tier increasing block rates as noted in Decision 08-08-030 of August 21, 2008[22]:

> *3. GSWC's proposed residential conservation rate design for Regions II and III consists of two-tier increasing block rates ……*

3.4 METER READING ERROR TIER-CROSSING SOLUTION

The introduction of tiered rates introduces a serious systematic problem. A meter reading error, which results in an incorrect crossing of the tier level, regardless of direction, can only unfairly penalize the ratepayer, as it always erroneously increases a ratepayer billing charge[23].

The *proposed settlement* by GSWC and DRA continue to ignore this problem.

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[21] D.08-08-030 Page 7, last ¶ as well as October 19, 2007 Settlement Page 5 Section IV-D-3-a
[22] D.08-08-030 Page 38 Finding of Fact #3
[23] See Attachment 1 for demonstrations of meter reading error systematic billing bias.

The argument that WRAM/MCBA solves the problem of unfair gains by the utility does not respond to the main injury of the unfairly penalized ratepayers. In effect, with WRAM, the loss of that over-charged group is actually redistributed to the whole of those ratepayers, thereby forcing a small group to sacrifice what is owed them to a general subsidizing of the entire District population. With GSWC's 250,000 customers, a 1% error rate yields 2,500 mistakes amounting to $38,000 annually[24].

A minor change in the philosophy of tiered rates would resolve this problem by simply replacing the GSWC established monthly 15ccf tier level with an annual 180ccf (12 x 15ccf) tier level. This could be accomplished with a single billing adjustment each December, dramatically reducing not only the number of errors that could cause further issues and that must be reconciled, but more importantly, reducing the overcharging of and forced redistribution and subsidization upon one unfortunate group of residential ratepayers.

The following attributes apply to such an approach:

- Consumers that annually use 180ccf or less pay all charges at tier-one rates. Annual consumption in excess of that level incurs tier-two rates.

- Current monthly 15ccf tier level billing is unchanged except for one December adjustment. Monthly conservation signals are unchanged.

- The final month adjustment to achieve the annual 180ccf tier level would have no more impact than approved WRAM surcredits.

[24] The amount per error is the $1.28 of the demonstration in attachment 1.

- Many ratepayers will, and many more will begin to scrutinize this process, as their bills grow and water becomes less available and more costly. Clarity and even-handed dealings with residential consumers would only decrease negative response as well as reduce legal vulnerabilities and liability.

- Conservation would be enhanced throughout the entire year rather than limited to those few months when a 15ccf tier level threat exists to be noticed, realized and attended to.

- Calculating and handling the impact of this option, in forecasting revenue, is no more complex than that of tiered rates without this option and WRAM protects the utility in either instance.

- The same approach is applicable to any number of tier levels, should modifications ever become necessary in the future.

- No significant utility disadvantage exists. Nor argument has ever been raised regarding such. In fact, none exists.

3.5 ADJUSTMENTS TO RECORDED REVENUE ISSUE

The *proposed settlement* omitted any reference to the GSWC Application statement concerning "adjustments" to recorded revenue levels[25]:

> *(4) adjustments to GSWC's recorded revenues would include deductions for franchise fees and uncollectibles.*

[25] Application Page 21, Section I, Paragraph 2, Item 4, last sentence

The Settlement of October 19, 2007 is very clear on the matter that all fixed and variable costs outside those covered by the MCBA and service charges are covered by the WRAM[26]. For the Santa Maria District, the GRC already included 0.062% of the overall revenue for uncollectibles in expenses[27]. Additionally, Franchise Fees are already categorized as local taxes.

The adjustments to recorded revenues should therefore be disallowed as so indicated in the Application.

4. CONCLUSIONS

This Application was in response to a directive in Decision 08-08-030[28]. That decision also included other specific directives[29] to be instituted in this proceeding:

- *Region I residential and non-residential customers will share the same conservation rate design and tariff schedule.*

- *GSWC will file an application proposing revised conservation rates in a manner consistent with those proposed for Regions II and III in this settlement,* namely two-tier rate designs.

The proposed GSWC/ DRA settlement disregards those directives for solely superficial and arbitrary reasons.

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[26] Settlement of October 19, 2007 Page 9 Section VI-A
[27] Decision 08-01-043 of January 31, 2008, Attachment B
[28] Decision 08-08-030 Page 7, last sentence
[29] Either directly or via the Settlement of October 19, 2007

Justification of those Commission directives is not arguable in this proceeding. The appropriate means of changing those directives would be via a petition for modification (Rule of Practice and Procedure 16.4).

After-the-fact piecemeal, cherry-picked, and spurious mutations to a Commission-adopted settlement package must be denied. GSWC must be instructed to do their tardy and procrastinated homework[30], to develop and propose the required rate designs.

A modification to correct utility meter reading errors, that always penalize ratepayers, was ignored in the *proposed settlement* and should be ordered, as defined above, whenever tiered-rate designs are used.

That application assertion concerning adjustments to recorded revenue should be denied, to thereby avoid the unfairly penalizing double billing.

The *proposed settlement* must be remanded with instructions to comply with the directives of Decision 08-08-030 and its adopted settlement.

January 5, 2009 respectfully submitted,

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[30] Settlement of October 19, 2007 Page 8 Section IV-F-1

Attachment

Example of How Meter Reading Errors Always Victimize the Ratepayer with Tiered Rates When the Tier Level is incorrectly crossed (regardless of direction)
Trimble - December 7, 2008

Assuming the following parameters:
Service Charge = $13.95
Tier 1 rate = $1.428
Tier 2 rate = $1.642
Tier level = 15 ccf

The first example is a constant usage level above the tier level. The error drops the reading to below the tier level. It assumes 19 ccf /month with a 10 ccf (low) error:

Meter Rd	Total ccf	Tier 1	Tier2	error	billing, $
4074					
4093	19	15	4	0	41.938
4112	19	15	4	0	41.938
4121	9	9	0	-10	26.802
4150	29	15	14	0	58.358
4169	19	15	4	0	41.938
4188	19	15	4	0	41.938

Total = $252.912
Correct Total = 6 x 41.938 = $251.628
Overcharge = $ 1.284

The second example is a constant usage level below the tier level. The error raises the reading to above the tier level. It assumes 11 ccf/month with a 10 ccf (high) error:

Meter Rd	Total ccf	Tier 1	Tier2	error	billing, $
4050					
4061	11	11	0	0	29.658
4072	11	11	0	0	29.658
4093	21	15	6	10	45.222
4094	1	1	0	0	15.378
4105	11	11	0	0	29.658
4116	11	11	0	0	29.658

Total = $179.232
Correct Total = 6 x 29.658 = $177.948
Overcharge = $ 1.284

APPENDIX A

Notice of Availability

Title:

COMMENTS OF GERALD TRIMBLE ON THE SETTLEMENT AGREEMENT BETWEEN GOLDEN STATE WATER COMPANY AND THE DIVISION OF RATEPAYER ADVOCATES

Contents:
The Protest includes a single file in PDF/A format at the following URL.

URL
http://personal.linkline.com/trimble/0809010/Comments.pdf

Date available:
01/05/09

Name and contact information:
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Certificate of Service

I hereby certify that I have this day served a copy of the

**COMMENTS OF GERALD TRIMBLE
ON THE SETTLEMENT AGREEMENT BETWEEN
GOLDEN STATE WATER COMPANY AND
THE DIVISION OF RATEPAYER ADVOCATES**

on all known parties to A.08-09-010 by sending a Notice of Availability via electronic mail and by mailing a properly addressed paper copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on January 5, 2009 at Santa Maria, California

Gerald Trimble

Proceeding: A0809010 - GOLDEN STATE WATER C
Filer: GOLDEN STATE WATER COMPANY (U133W)
List Name: LIST - Last changed: November 10, 2008
All persons herein listed were served by Notice of Availability on 1/05/09.

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