

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



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| Joint Application of Park Water Company (U314W) and Apple Valley Ranchos Water Company (U346W) for Authority to Establish An Authorized Cost of Capital for 2013-2015. | } | Application 12-05-001 (Filed May 1, 2012) |
| In the matter of the Application of San Gabriel Valley Water Company (U337W) for an Authorized Cost of Capital for 2013 through 2015. | } | Application 12-05-002 (Filed May 1, 2012) |
| Application of Suburban Water Systems (U339) for Authority to Establish its Authorized Cost of Capital for the period from January 1, 2013 through December 31, 2015. | } | Application 12-05-004 (Filed May 1, 2012) |
| Application of Great Oaks Water Company (U-162-W) for an Order establishing its authorized cost of capital for the period from July 1, 2013 through June 30, 2016. | } | Application 12-05-005 (Filed May 1, 2012) |

**[PROPOSED] ADMINISTRATIVE LAW JUDGE’S RULING GRANTING
MOTION OF GREAT OAKS WATER COMPANY
TO COMPEL DISCOVERY FROM DRA**

1. Summary

Based upon the Motion of Great Oaks Water Company (Great Oaks) to Compel Discovery from DRA (Motion to Compel), and following review and consideration of the Response of the Division of Ratepayer Advocates to Great Oaks Water Company’s Motion to Compel Discovery (DRA Response) and the Reply of Great Oaks Water Company to DRA’s Response to Motion to Compel Discovery (Great Oaks’ Reply), this ruling orders DRA to produce the discovery requested by Great Oaks within five (5) days

of the date of this ruling or face the probability of evidence sanctions as detailed more fully in this ruling.

2. Great Oaks' Motion to Compel

On June 19, 2012, Great Oaks served a discovery request, GOWC-1, upon DRA with a response date of June 26, 2012 pursuant to Commission Rule 10.1. In its email transmittal of GOWC-1, Great Oaks offered DRA additional time beyond June 26, 2012 to respond to the discovery request upon request. DRA did not respond to GOWC-1 by June 26, 2012, nor did DRA request additional time or object to GOWC-1 by June 26, 2012. On July 3, 2012, Great Oaks sent a "meet and confer" letter to DRA by email requesting full and complete responses to GOWC-1 by July 9, 2012 to avoid the necessity of a motion to compel. Great Oaks asserted that because no objections to GOWC-1 had been made before the due date for the discovery that DRA had waived objections to GOWC-1. DRA, through counsel, acknowledged receipt of the "meet and confer" letter on July 3, 2012, and further indicated efforts would be made to learn the reason for the late responses to GOWC-1.

Two days later, DRA contacted Great Oaks by telephone and email promising to provide some of the requested discovery. Great Oaks reiterated its position that objections to the discovery had been waived by DRA.

On July 10, 2012, Great Oaks received a portion of the requested discovery from DRA together with a note indicating that further responses to GOWC-1 would be provided after review by DRA's attorney. Great Oaks responded that same day with a letter sent by email asserting deficiencies in DRA's response to GOWC-1. Also on July 10, 2012, DRA emailed a written response to GOWC-1 to Great Oaks, including for the first time two objections to the requested discovery. DRA objected to Request No. 7 on the grounds of attorney-client privilege and to Request No. 8 on both relevancy and attorney-client privilege grounds. Because DRA's counsel was unaware of DRA's response to GOWC-1, Great Oaks provide the response to DRA counsel.

Subsequently, DRA provided additional information in response to GOWC-1 and withdrew the objections to Request No. 8. On July 11, 2012, DRA withdrew its attorney-client privilege objection to Request No. 7, stating "[w]e will not be asserting attorney/client privilege any longer for this request." On July 13, 2012, DRA first

asserted that it would not produce its contract with its expert witness under Request No. 7 due to the attorney work-product privilege. Ultimately, Great Oaks and DRA were unable to resolve issues pertaining to Request Nos. 3, 4, and 7 of GOWC-1 and DRA informed Great Oaks that a motion to compel would be necessary to obtain the discovery requested in those three requests.

On July 20, 2012, Great Oaks filed its verified Motion to Compel supported by numerous exhibits. On July 30, 2012, DRA filed its Response, raising new issues and new objections not previously raised or discussed between the parties. On that same day, Great Oaks, by emailed letter to the Administrative Law Judge, requested leave to file a reply to DRA's Response. On August ____, 2012, the assigned Administrative Law Judge granted Great Oaks permission to file a reply to DRA's Response by [email/letter/telephone]. Great Oaks filed its Reply on that same day.

After careful consideration of the arguments of the parties, the assigned Administrative Law Judge issues this ruling granting Great Oaks' Motion to Compel.

3. Discussion

Commission Rule 11.3 permits the filing of a motion to compel discovery only upon a showing that the parties to the discovery dispute have previously met and conferred in a good faith effort to informally resolve the dispute. Great Oaks provided sufficient evidence with its Motion to Compel to establish that it made a good faith effort to resolve its discovery dispute with DRA.

The discovery dispute was narrowed to three (3) discovery requests from Great Oaks to DRA:

Request No. 3: Please provide a listing of proceedings in which DRA's expert has testified (in person or in writing) during the last five (5) years. Note that this request is not limited to testimony by DRA's expert before the California Public Utilities Commission. For each proceeding, please identify the party for whom DRA's expert testified, the date of the testimony, and whether the testimony was in person or in writing.

Request No. 4: Please provide DRA's expert's fee schedule or a listing of the amounts charged by DRA's expert for services, including testimony, for the last five years.

Request No. 7: Please provide any written agreement or correspondence (including email correspondence) providing information about the services DRA's expert will be providing in this proceeding.

- a. DRA waived its objections to Great Oaks' discovery requests by not timely objecting or requesting additional time to object or respond.

It is undisputed that DRA did not timely respond or object to Great Oaks' discovery requests. DRA did not raise any objections to GOWC-1 until July 10, 2012, two weeks after the original due date for DRA's responses, and of the two objections first raised at that time, both were ultimately withdrawn. It was not until July 13, 2012 that DRA raised objections to Request Nos. 3 and 4 and stated a new objection to Request No. 7. And, it was not until DRA's Response to the Motion to Compel that DRA raised relevancy objections to all three remaining discovery requests.

The Commission is mindful that the statutory rules of procedure utilized in judicial proceedings are not strictly applied in Commission proceedings, including adversarial ratesetting proceedings, unless necessary to protect the parties constitutional rights. However, Commission proceedings are not so informal that no rules of procedure apply. It is important to strike the appropriate balance to allow for the desired informality of proceedings before the Commission while also protecting the important rights of the parties. The right to discovery is one of those important rights that allows for fair hearings.

DRA admittedly did not object to Great Oaks' discovery requests until well after responses were due. Great Oaks notified DRA that it would assert that DRA waived its right to object by not making timely objections. But even after being so notified, DRA did not object until one week later. Even then, when DRA did object, it did so inappropriately. The original objections were subsequently withdrawn by DRA and new objections were later raised. Then, in response to Great Oaks' Motion to Compel, DRA raised additional new objections as to relevancy.

Under these circumstances it is unfair to Great Oaks to allow DRA's untimely objections to prevent discovery. Without making a universal discovery rule for all Commission proceedings, it is clear that DRA had ample opportunity to object and failed to do so in a timely or appropriate manner. Allowing DRA to make objections well after any reasonable objections should have been made would be unfair to Great Oaks and undermine its right to a fair hearing. DRA's objections to Great Oaks' discovery requests were waived and are overruled.

b. DRA's objections would have been overruled if considered.

Had we considered the objections raised by DRA, the outcome would still be the same. Great Oaks' discovery requests were neither burdensome nor irrelevant. And, DRA failed to establish that its contract with its expert witness qualified for protection from disclosure under the attorney work-product doctrine. DRA presented no evidence or verified statements that the requested writing reflected an attorney's impressions, conclusions, opinions, or legal research or theories. Placing an "attorney work product" stamp on a document does not establish the attorney work-product privilege. Had it not already been determined that DRA waived its right to object to GOWC-1, DRA's objection on the basis of attorney-work product would have been overruled.

c. DRA is ordered to provide full and complete responses to GOWC-1 Request Nos. 3, 4, and 7 within five (5) days of the date of this Ruling.

Great Oaks served its discovery requests on June 19, 2012. The remaining discovery requests which were the subject of the Motion to Compel seek limited information from DRA and/or its expert witness. The information requested is neither burdensome nor complex. DRA is ordered to provide full and complete responses to GOWC-1, Request Nos. 3, 4, and 7 within five (5) days of the date of this Ruling.

d. Should DRA fail to comply with this Ruling, an evidence sanction is appropriate.

As noted by Great Oaks, a monetary sanction against DRA for failure to comply with this Ruling would be counterproductive and would not provide an appropriate remedy for DRA's noncompliance. Under the circumstances of this case, an evidence sanction as requested by Great Oaks is an appropriate remedy for noncompliance with this Ruling.

Should DRA fail to comply with this Ruling, Great Oaks is granted leave to file a motion for sanctions against DRA. The Commission will consider the motion and the requested sanctions at that time. DRA is on notice that an evidence sanction, including an order precluding DRA's expert witness from testifying directly or indirectly in this proceeding, is considered appropriate under the circumstances presented in Great Oaks' Motion to Compel.

4. Conclusion

Great Oaks demonstrated the requisite good faith in attempting to resolve its discovery issues with DRA. DRA failed to make timely objections or responses to Great Oaks' discovery request GOWC-1 and under the circumstances presented in the Motion to Compel, waived its right to object to GOWC-1. DRA is required to provide full and complete responses to GOWC-1 Request Nos. 3, 4, and 7 within five days of the date of this ruling. Should DRA fail to comply with this Ruling, Great Oaks is authorized to file a motion for sanctions which may include the evidence sanction of precluding DRA's expert witness from testifying in this proceeding either directly or indirectly.

Therefore, IT IS RULED that:

1. The Motion of Great Oaks Water Company to Compel Discovery from DRA is granted.
2. DRA shall provide full and complete responses to GOWC-1 Request Nos. 3, 4, and 7 within five (5) days of the date of this Ruling.
3. Should DRA fail to comply with this Ruling, Great Oaks is authorized to file a motion for sanctions. The evidence sanction of precluding DRA's expert witness from testifying directly or indirectly in this proceeding is deemed an appropriate sanction for noncompliance with this Ruling.

Dated: _____ at San Francisco, California.

Linda R. Rochester
Administrative Law Judge