

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



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Application of Suburban Water Systems
(U339W) to Establish a Holding Company.

A.09-07-015
(Filed July 13, 2009)

**MOTION OF SUBURBAN WATER SYSTEMS
TO DISMISS APPLICATION 09-07-015**

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Dated: March 24, 2010

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

Application of Suburban Water Systems
(U339W) to Establish a Holding Company.

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TO DISMISS APPLICATION 09-07-015**

Pursuant to Rule 11.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Suburban Water Systems (“Suburban”) hereby submits this motion to dismiss the *Application of Suburban Water Systems (U339W) to Establish a Holding Company* (the “Application”) based on the pleadings. Suburban requests that the Commission dismiss the Application because the pleadings indicate that the proposed holding company structure is unnecessary and that the Commission should instead rely on the pending affiliate transaction rulemaking (R.09-04-012)¹ to safeguard the public interest. In addition, the concerns that the Division of Ratepayer Advocates (“DRA”) raised in this proceeding are more properly addressed in other proceedings. Finally, in dismissing the Application the Commission should find that there is no need for the Suburban to refile the Application at a later date.

I. BACKGROUND

In Suburban’s most recent general rate case decision, the Commission summarized the transactional history of Suburban and its parent company, SouthWest:

In 1975, Southwest requested Commission authority to purchase Suburban (Application 55655). At the time, both Southwest and Suburban were regulated water utilities. In its application, Southwest stated its intention to consolidate its California water utility operations, and that Suburban would remain as a certificated utility. The Commission approved this transaction in Decision (D.) 84466 (1976)...²

¹ R.09-04-012, *Order Instituting Rulemaking to Develop Standard Rules and Procedures for Regulated Water and Sewer Utilities Governing Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Service*, issued April 23, 2009.

² D.09-03-007, 2009 Cal. PUC LEXIS 148, **20-21

Noting that D.84466 did not authorize Suburban or SouthWest to form a holding company, the Commission directed Suburban to file the current Application for a holding company.³ This directive was perplexing because such a holding company does not currently exist, and Suburban did not express an intention to create a holding company. The Commission did indicate an interest in affiliate transactions between SouthWest and Suburban, but explained that it would address these issues in the industry-wide affiliate transaction rulemaking.⁴ Notwithstanding its own disinclination to establish a holding company, Suburban complied with the Commission's directive and filed this Application on July 13, 2009.

A holding company is a corporate entity with "no operations, no employees, no assets, and no purpose" other than to own stock.⁵ Although the discussion in the rate case decision is limited, it appears that the Commission mistakenly believed that SouthWest/Suburban had an additional holding company. This is incorrect.

On February 8, 2010, Suburban filed its status report. In that report, Suburban noted: (1) that the Commission overstepped its authority by ordering Suburban to create a holding company, (2) that the holding company would be a meaningless corporate layer serving no purpose, and (3) that the affiliate transaction rules that emerge from the current rulemaking (R.09-04-012) will apply to interactions between SouthWest and Suburban and protect the public interest.

In an email to the parties on February 9, 2010, ALJ Ryerson noted that Suburban and DRA agreed that the application should be dismissed, albeit for difference reasons. After conferring with DRA as suggested by ALJ Ryerson, Suburban reported by letter on February 16, 2010 (attached as Appendix A) that the parties had discussed the issue, and the parties agreed that there is no need to proceed with the application.⁶ On March 2, 2010, DRA confirmed in a

³ *Id.*, **21-22.

⁴ *Id.*, *22.

⁵ D.95-05-021, *Application of San Diego Gas & Electric Company (U 902-M) for Authorization to Implement a Plan of Reorganization Which Will Result in a Holding Company Structure*, 1995 Cal. PUC LEXIS 440, *14 (interim opinion).

⁶ Suburban noted in the letter, however, that Suburban and DRA disagreed as to whether the Commission should require Suburban to refile its application at a later date.

letter to ALJ Ryerson that, “DRA agrees that the affiliate rules rulemaking will give both DRA and Commission-regulated water utilities useful guidance on the proper relationship between utilities and their affiliated, subsidiary or parent (holding) companies...” DRA went on to address separate concerns regarding discovery procedures and allocation issues that it raised, unsuccessfully, in Suburban’s last general rate case.

II. THE COMMISSION SHOULD DISMISS THE APPLICATION

A. The Application is Duplicative of the Affiliate Transaction Rulemaking and is Unnecessary.

The Commission may dismiss an application where the issues raised in the application are inappropriate for Commission consideration at the time of the proceeding.⁷ In a recent decision, D.08-09-011, the Commission granted a motion to withdraw an application because it determined that, “the application proposes programs or projects that are premature and should be raised in other pending proceedings or are untimely and should have been included in recent proceedings.”⁸ In that proceeding, two utilities jointly filed application to achieve greenhouse gas reductions through various measures. Following the utilities’ filing of the application, the Commission initiated a separate rulemaking proceeding to deal with climate-related issues.⁹ The Commission determined that the application duplicative of the existing scope of the climate-related rulemaking, and therefore its review of those proposals in the application proceeding was unnecessary.¹⁰

The current proceeding evaluating the prudence of establishing a holding company for Suburban is similarly unnecessary. Both Suburban and DRA agree that the affiliate transaction rulemaking (R.09-04-012) will provide useful guidance on the proper relationship

⁷ See, e.g., D.04-07-004, *Application of Kathleen I. Johnson requesting to sell all stock of the Arrowhead Manor Water Company, Inc. and Rio Plaza Water Company, Inc. requesting to buy all stock in this water system located in Cedar Glen, San Bernardino County, California*, 2004 Cal. PUC LEXIS 362, *3 (“It is clear that this application by Arrowhead is premature...Accordingly, we will dismiss the application and close this proceeding”).

⁸ D.08-09-011, *Application of San Diego Gas & Electric Company (U902M) and Southern California Gas Company (U904G) for Approval of Proposals Set Forth in their Joint Climate Action Initiative*, 2008 Cal. PUC LEXIS 389, *10.

⁹ *Id.* at **9-10.

¹⁰ *Id.* at *11.

between a utility and its parent company.¹¹ Similar to the Commission's determination in D.08-09-011 that the application was unnecessary in light of the related rulemaking, Suburban's application is unnecessary in light of the pending affiliate transaction rules, which will provide a more detailed and comprehensive determination of the relationship between Suburban and SouthWest. As such, the Commission should grant this motion to dismiss the application.

B. DRA's Discovery Concerns Related to Allocation Issues are Untimely.

In D.08-09-011, the Commission determined that the application in that proceeding was untimely in addition to being unnecessary. The Commission found that the scope of application was, in part, "duplicative of the existing scope of the general rate cases...[t]he specific proposals should have been addressed in the general rate cases."¹² As such, the Commission granted the motion to withdraw the application.

In this proceeding, DRA raised issues that are more appropriately considered – and in fact were already considered – in Suburban's general rate case. DRA admitted this point in its March 2, 2010 letter: "DRA understands allocation issues between Suburban and Southwest are not immediately in issue in the instant proceeding." DRA's concerns are matters for a general rate case, not this Application. The Commission already rejected DRA's claims in Suburban's last general rate case.¹³ Indeed, contrary to DRA's claim in its letter, the Commission's decision in Suburban's most recent general rate case indicated that it was confident that Suburban's customers are not improperly subsidizing the operations of SouthWest's unregulated affiliates.

As explained by the Commission when it granted the request to withdraw the application in D.08-09-011, to the extent that DRA wishes to re-litigate the issues that it had an opportunity to raise in the previous general rate case, it may do so when Suburban files its next general rate case. Therefore, the Commission should grant Suburban's motion to dismiss the Application.

¹¹ DRA Letter to ALJ Ryerson, March 2, 2010.

¹² D.08-09-011, 2008 Cal. PUC LEXIS 389, *12.

¹³ D.09-03-007, 2009 Cal. PUC LEXIS 148, *8 ("DRA generally was not persuasive").

C. The Commission Should Not Require Suburban to Refile its Application at a Later Date

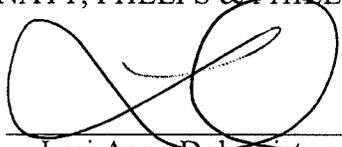
As noted above, Suburban filed the Application involuntarily. It had no interest in establishing a holding company. The pleadings in this proceeding make it clear that the Commission's directive likely stemmed from a misunderstanding, that the Commission overstepped its authority in ordering Suburban to file the Application, and that any concerns that the Commission may have regarding the relationship between SouthWest and Suburban will be addressed by the affiliate transaction rulemaking. Therefore, in dismissing the Application, the Commission should find that Suburban fulfilled its obligation under D.09-03-007 and there is no need for the company to refile the Application at a later date.

III. CONCLUSION

For the reasons set forth above, Suburban respectfully requests that the Commission dismiss the Application and subsequently close the proceeding.

Dated: March 24, 2010

MANATT, PHELPS & PHILLIPS, LLP

By: 

Lori Anne Dolqueist

Attorneys for Applicant
Suburban Water Systems

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APPENDIX A

February 16, 2010

Client-Matter: 88207 032

VIA E-MAIL

Administrative Law Judge Victor Ryerson
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Suburban's Proposal for Holding Company Application A.09-07-015

Dear Judge Ryerson:

In your February 2, 2010 e-mail you directed Suburban Water Systems (Suburban) and the Division of Ratepayer Advocates (DRA) to meet and confer to determine whether and how to proceed with Suburban's holding company application, A.09-07-015. Suburban and DRA conferred via telephone on Thursday, February 11, 2010 and exchanged voicemails on Friday, February 12, 2010.

Suburban and DRA agree that there is no need to proceed with Suburban's holding company application right now. As you noted in your email, although the Parties may have come to this conclusion for different reasons, Suburban and DRA agree that there is "no need to rush to judgment at this time."

Suburban and DRA disagree, however, as to whether the Commission should require Suburban to refile its application at a later date. Suburban believes that there is no need for it to file a subsequent application and that the Commission may lack the authority to require it to do so. DRA, however, expressed concern regarding changes in SouthWest's business since the Commission approved its purchase of Suburban in 1976 in Decision 84466. Additionally, DRA repeated its claim that it will not be able to obtain adequate information from Suburban's parent company, SouthWest Water Company (SouthWest).

Although SouthWest's business has evolved since 1976, there has been no event that would trigger the need for Commission approval. Since 1976, Suburban has been a wholly owned subsidiary of SouthWest. The Commission approved this relationship and there has been no subsequent change that would require Commission approval. Similarly, SouthWest has not been involved in any merger, acquisition or transfer of control that the Commission would need to approve. (See Cal. Pub. Util. Code §854(c).) If Suburban or SouthWest were to become involved in any such transaction, they would file an application for the necessary Commission

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approval. In the absence of such a triggering event, the Commission has no grounds to order Suburban to file an application.

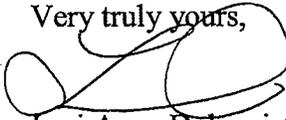
This is particularly true in light of the current affiliate transaction rulemaking (R.09-04-012). In that proceeding, the Commission noted that because most regular water utilities are owned by companies that, like SouthWest, have both regulated and non-regulated assets, "it is essential that this Commission develop rules which address the relationship between the regulated water utility and its parent and affiliates." (R.09-04-012, Order Instituting Rulemaking, p. 4.) The affiliate transaction rules that result from this proceeding will address concerns regarding the effect of SouthWest's unregulated operations on Suburban.

DRA has claimed repeatedly in this proceeding that it has not been able to obtain adequate information regarding SouthWest's operations. These claims are identical to the claims that DRA made during Suburban's last general rate case. In that proceeding, however, the administrative law judge dismissed DRA's motion to compel Suburban and SouthWest to provide information that DRA argued was necessary to complete its review. Moreover, although DRA repeated its claims in its briefs, the Commission stated, "DRA generally was not persuasive." (D.09-03-007, *Application of Suburban Water Systems*, 2009 Cal. PUC LEXIS 148, *8.)

DRA's claims regarding access to parent company information belong in a general rate case or the affiliate transaction rulemaking. There is no need for the Commission to require Suburban to file an application (nor is it clear whether the Commission would have the authority to order such an application) merely to provide DRA with the opportunity to raise issues that the Commission has already addressed.

Suburban therefore proposes to file a motion to withdraw the holding company application. Suburban will also seek a ruling as to whether it must file another application after the conclusion of the affiliate transaction rulemaking.

Very truly yours,



Lori Anne Dolqueist

cc: Service List for A.09-07-015 (via email)

PROOF OF SERVICE

I, Cinthia A. Velez, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. On March 24, 2010, I served the within:

***Motion of Suburban Water Systems
to Dismiss Application 09-07-015***

on the interested parties in this action addressed as follows:

See attached service list.

- (BY PUC E-MAIL SERVICE)** By transmitting such document electronically from Manatt, Phelps & Phillips, LLP, San Francisco, California, to the electronic mail addresses listed above. I am readily familiar with the practice of Manatt, Phelps & Phillips, LLP for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 1.10(b) of the Public Utilities Commission of the State of California and all protocols described therein.

- (BY U.S. MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 24, 2010, at San Francisco, California.



Cinthia A. Velez

PUC E-Mail Service List
A.09-07-015
[Updated January 25, 2010]

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U.S. Mail Service List
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