



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

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Jon A. Whaley,

Complainant,

vs.

Golden State Water Company (U 133 W),

Defendant.

Case No. (C.) 12-05-012

(Filed May 8, 2012)

**GOLDEN STATE WATER COMPANY'S (U 133 W)  
MOTION TO DISMISS COMPLAINT**

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June 15, 2012

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Pursuant to Rules 11.1 and 11.2 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Golden State Water Company ("Golden State") hereby moves to dismiss the complaint of Jon A. Whaley ("Complainant").

**I. INTRODUCTION**

This complaint is at bottom a challenge to the reasonableness of Golden State's rates based on customer and quality of service in its Ojai Customer Service Area ("CSA"). Complainant is a member of a vocal minority of Golden State's Ojai customers that are dissatisfied with their water service and have been encouraging the Commission to lower the rates in Ojai.<sup>1</sup> But displeasure with one's water utility is simply not grounds for a formal complaint before the Commission. The complaint fails on its face because it is procedurally improper, the wrong venue for determining the reasonableness of rates, and devoid of any allegation that Golden State has violated any specific law or order or rule of the Commission.

The Commission is currently processing Application 11-07-017, Golden State's company-wide general rate case ("GRC"), in which Golden State seeks an order authorizing it to increase rates for water service for the years 2013-2015. The parties to the GRC have submitted

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<sup>1</sup> See <http://www.ojaiflow.com/about/> ("Ojai FLOW are the hundreds of Ojai voters [listed] below . . . Jon Whaley").

voluminous testimony, engaged in lengthy settlement discussions, and are currently preparing their opening briefs, with settlement documentation due on June 21, 2012.<sup>2</sup> The Commission has also expended significant resources in this GRC, holding twelve public participation hearings (“PPHs”) throughout Golden State’s CSAs.<sup>3</sup> The well developed record in this GRC includes a thorough and complete analysis of customer service and water quality issues in Golden State’s Ojai CSA.

In fact, to protect the interests of its constituents, the City of Ojai itself has intervened and is a party to the GRC.<sup>4</sup> Moreover, many individual Ojai customers have participated in the GRC through the PPHs, addressing the Commission in connection with their concerns about service quality. Indeed, Complainant attended the Ojai PPH held on February 29, 2012, and voiced his concerns regarding water quality and customer service in Ojai.

Notwithstanding that the quality of Golden State’s customer service in Ojai and its other CSAs is being addressed in Golden State’s GRC, with the City of Ojai’s participation as a party, Complainant has filed this complaint, raising the exact water quality and customer service issues he raised at the Ojai PPH. Under well-established Commission precedent, such a complaint is the improper procedural vehicle for such a challenge—such issues must be addressed in the context of a GRC, and here, the Commission is currently doing so in Application 11-07-017. Accordingly, the complaint is duplicative, unnecessary, and procedurally improper, and should be dismissed.

In any event, even if the complaint were procedurally proper (which it is not), in order to withstand a motion to dismiss, Complainant must allege that Golden State has done or omitted to

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<sup>2</sup> Administrative Law Judge’s Ruling Amending Proceeding Schedule (Application 11-07-017) at 2 (June 15, 2012).

<sup>3</sup> See Public Participation Hearing Transcripts (Application 11-07-017), Volumes 1-12.

<sup>4</sup> Protest of City of Ojai, California to the Application of Golden State Water Company for an Order Authorizing an Increase in Rates in its Region 1, Region 2, and Region 3 Customer Service Areas (Application 11-07-017) (August 19, 2011).

do any act or thing in violation, or claimed to be in violation, of applicable law, or rule or order of the Commission. Nowhere in Complainant's lengthy (and often unintelligible) statement of facts and issues does Complainant allege that Golden State has actually violated any law or rule or order of the Commission. In fact, Golden State's actions with respect to Complainant have at all times complied with applicable Commission requirements and law, including General Order 103-A, and Complainant does not allege otherwise. Accordingly, the complaint must be dismissed for failure to state a claim upon which relief may be granted.

Finally, even assuming that customer service issues were properly before the Commission by way of this complaint (which they are not), the complaint fails to comply with Rule 4.2(a) of the Commission's Rules of Practice and Procedure, as it is vague and ambiguous and does not advise the Commission and Golden State of the relief requested. Thus, the complaint should also be dismissed for failure to comply with Rule 4.2(a).

## **II. PROCEDURAL HISTORY**

The origins of this complaint date back to late November 2011, when Complainant (a customer in Golden State's Ojai CSA) filed informal complaint number 193465 ("Informal Complaint") seeking to resolve alleged "fluctuating water pressure" issues in his home and requesting a breakdown of billing statements.<sup>5</sup> On January 3, 2012, Golden State responded in writing to the Informal Complaint, addressing each of Complainant's concerns, specifically speaking to the Commission's rules regarding minimum operating pressure throughout its distribution system, and explaining Golden State's compliance with these minimum requirements.<sup>6</sup>

Complainant submitted a supplemental informal complaint ("Supplemental Informal

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<sup>5</sup> Exhibit 1 (Informal Complaint, CPUC File No. 193465 (Nov. 17, 2011)).

<sup>6</sup> Exhibit 2 (Golden State response to Informal Complaint (Jan. 3, 2012)).

Complaint”) to the Commission on January 16, 2012, repeating his water pressure complaint and raising various customer service-related grievances.<sup>7</sup> On February 2, 2012, Golden State responded to the Supplemental Informal Complaint, again responding to each of Complainant’s issues in detail. Among other things, Golden State explained that it had implemented a new customer care and billing system that offers expanded information on customer bills in response to customer interest in billing breakdowns.<sup>8</sup> Golden State also provided Complainant with supervisor information and encouraged Complainant to contact Golden State’s Community Education Manager with any further billing questions.<sup>9</sup>

On February 14, 2012, Complainant submitted a second supplemental informal complaint (“Second Supplemental Informal Complaint”).<sup>10</sup> Although satisfied with Golden State’s new billing system,<sup>11</sup> Complainant expressed continued displeasure with Golden State’s customer service and indicated an intent to escalate his protest to a formal complaint with the Commission.<sup>12</sup>

On March 19, 2012, Golden State formally responded to Complainant’s Second Supplemental Informal Complaint requesting a meeting at Complainant’s home to discuss his water service.<sup>13</sup> During the month of March, Complainant also exchanged a series of emails with Golden State’s Coastal District Manager seeking information regarding Golden State’s

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<sup>7</sup> Exhibit 3 (Supplemental Informal Complaint (Jan. 16, 2012)).

<sup>8</sup> Exhibit 4 (Golden State response to Supplemental Informal Complaint (Feb. 2, 2012)).

<sup>9</sup> *Id.*

<sup>10</sup> Exhibit 5 (Second Supplemental Informal Complaint (Feb. 14, 2012)).

<sup>11</sup> *Id.* (“The new billing system should correct the problem with prorated bills . . . Thanks for your offer to speak with a supervisor.”).

<sup>12</sup> *Id.* Shortly thereafter, at the February 29, 2012 PPH held in Ojai as part of Golden State’s current GRC, Complainant took up the same customer service issues set forth in his various informal complaints and urged the Commission to eliminate Golden State’s rate of return based on alleged poor water service. Exhibit 6 (February 26, 2012 PPH Transcript in Application 11-07-017 at 802-811, 866-870). At the PPH, as in the complaint, Complainant presented the testimony of one party to the current Golden State GRC, statements made in previous PPHs, information from the Commission’s water division, and Golden State’s parent company’s mission statement from an Internet website, among many other items. *Id.*

<sup>13</sup> Exhibit 7 (Golden State response to Second Supplemental Informal Complaint (March 19, 2012)).

compliance with its parent company's mission statement.<sup>14</sup> Golden State followed up on its response to the Second Supplemental Informal Complaint with an April 12, 2012 letter responding in detail to Complainant's email questions regarding the mission statement and again requesting a meeting at Complainant's home to investigate the water service issues he was experiencing.<sup>15</sup>

Despite its numerous attempts to address Complainant's issues, Golden State was ultimately unable to satisfy Complainant through the informal complaint process. Complainant filed Complaint 12-05-012 with the Commission on May 8, 2012.

### **III. DISCUSSION**

The complaint should be dismissed with prejudice on two grounds: (A) the complaint fails to state a claim upon which relief may be granted; and (B) the complaint fails to comply with Rule 4.2(a) due to vagueness.

#### **A. The Complaint Fails to State a Claim Upon Which Relief May Be Granted**

On a motion to dismiss a complaint, the legal standard against which the sufficiency of a complaint is measured is whether, taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law.<sup>16</sup>

##### **1. Complainant's Allegations Regarding Customer Service Fail to State a Claim**

Although lengthy and full of digressions on many far-reaching topics, the complaint is in essence a challenge to the reasonableness of Golden State's rates based on customer service in its Ojai CSA. But the complaint fails to state a cognizable claim because it is procedurally

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<sup>14</sup> See Exhibit 8 (Golden State second response to Second Supplemental Informal Complaint (April 12, 2012)).

<sup>15</sup> *Id.*

<sup>16</sup> See *CPN Pipeline Co. v. Pacific Gas and Elec. Co.*, Decision No. 01-05-086 at 14 (May 24, 2001). The Commission may properly take official notice of, and consider, the files and records of court and Commission proceedings. See *id.*

improper, the wrong venue for determining the reasonableness of rates, and devoid of any allegation that Golden State has violated any specific law or order or rule of the Commission.

a. The Complaint is Procedurally Improper

Section (F) of the complaint directs Complainant to explain fully and clearly the details of his complaint; however, instead of doing so, Complainant attaches an unintelligible narrative that strings together, without context, various statements of the Commission, block quotes from the testimony of one party to the current Golden State GRC, portions of PPH testimony, information from the Commission's water division, and Golden State's parent company's mission statement from an Internet website, among many other items.<sup>17</sup> As a result, it is difficult for Golden State to ascertain how the pieces of the complaint cohesively fit together to form a potential claim.

Section G(4) of the complaint directs the Commission and Golden State to "See Line F Summary" for the issues to be considered in this proceeding.<sup>18</sup> This section of Complainant's attachment raises issues with Golden State's customer service and alleges that Golden State's rates are unreasonably high in light of these alleged customer service issues. To the extent a claim is ascertainable from the complaint, therefore, it is a challenge to Golden State's rates based on customer service issues. Such a complaint is procedurally improper and must be dismissed.

Specifically, under Rule 4.1(b) of the Commission's Rules of Practice and Procedure ("Rule 4.1(b)"), a complaint as to the reasonableness of rates or charges of any water corporation is improper unless it is signed by the mayor or the president or the chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and

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<sup>17</sup> See Complaint 12-05-012 at Section (F).

<sup>18</sup> *Id.* at Section (G)(4).

county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of water.<sup>19</sup> In this case, Complainant is the only signatory to the complaint.<sup>20</sup> Thus, the complaint fails on the most basic procedural level and must be dismissed for failure to comply with Rule 4.1(b).

b. A Complaint is the Wrong Vehicle for Protesting Rates Based on Customer Service

Even assuming the complaint were procedurally proper, a complaint is the wrong vehicle for challenging Commission-approved rates without alleging a violation of any provision of law or tariff, order, or rule of the Commission:

complaint proceedings are appropriate for addressing tariff violations, wrongful billings, or an improper assignment of a customer to a particular schedule, but are not appropriate forums for discussing rate design, rate restructuring, or the integrity of an already approved rate.<sup>21</sup>

This is because the Commission already has established procedures and particular proceedings in place to address rate issues—i.e., GRCs and other ratemaking proceedings—which can more effectively handle the complexity of issues involved and better address the interests of the many disparate stakeholders affected by such rate issues.<sup>22</sup> In brief, complaints are meant to assist the Commission in identifying whether a utility has broken a specific law (or Commission order or rule); they are not meant to serve as venues for determining whether a rate, or a rate increase, is appropriate.

Here, Complainant challenges the Commission-approved rates in Ojai based on allegations of poor customer service, but fails to identify any provision of law, or tariff, order, or

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<sup>19</sup> Commission Rules of Practice and Procedure Rule 4.1(b).

<sup>20</sup> While Complainant has attached several documents to the complaint that include signatures of what appear to be Ojai residents, such residents have not signed the complaint and therefore are not parties to the complaint as required by Rule 4.1(b).

<sup>21</sup> See, e.g., Decision No. 09-11-017 at 3-4 (Nov. 20, 2009) (dismissing complaint challenging the reasonableness of an approved rate design, but failing to allege that defendant violated its tariffs, or any provision of law, or any Commission order or rule); Decision No. 94-10-058 at 3-4 (October 26, 1994) (same).

<sup>22</sup> Decision No. 94-10-058 at 3 (October 26, 1994).

rule of the Commission that Golden State has violated. As such, this complaint is improper and should be dismissed with prejudice to the extent that it seeks a Commission determination that Golden State's rates in Ojai are unjust and unreasonable. Such issues are only appropriately addressed in the context of a GRC.<sup>23</sup>

Indeed, the Commission has specifically determined that Ojai-related water quality and customer service issues should be addressed in Golden State's GRC, and not in any other proceeding.<sup>24</sup> In the last Golden State Region I GRC (Application 10-01-009), the Commission acknowledged and carefully scrutinized the various issues presented by Golden State's Ojai CSA.<sup>25</sup> Due to the concerns expressed at the PPH, the Commission ordered additional Ojai-specific testimony from both Golden State and the Division of Ratepayer Advocates ("DRA").<sup>26</sup> After considering all the evidence presented, the Commission determined that an added level of information and analysis for Ojai should be incorporated into Golden State's next (i.e. the current) GRC, but specifically declined to order a separate process or audit apart from the next GRC for purposes of evaluating Golden State's service in the Ojai CSA.<sup>27</sup> The Commission determined that it has "more than enough proceedings and issues to address without adding a new process outside of the general rate case."<sup>28</sup> Accordingly, the Commission ordered in Decision 10-12-059 that Golden State is obligated to submit ten years' worth of historical customer data for evaluation in its next GRC.<sup>29</sup>

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<sup>23</sup> As a general matter, customer service and water quality issues are properly addressed in a water utility's GRC. Decision 07-05-062. The Commission set the minimum data requirements for a Class A water utility GRC filing in Decision 07-05-062. *Id.* at 22, Appendix A. Such filings must include detailed discussions of water quality and service quality, among many other things. *Id.* at Appendix A, A-30.

<sup>24</sup> Decision 10-12-059 at 25.

<sup>25</sup> *See id.* at 23-26.

<sup>26</sup> *Id.* at 23.

<sup>27</sup> *Id.* at 25.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

As required by the Commission in Decision 10-12-059, Golden State has submitted the required added levels of information, analysis, and testimony in Application 11-07-017; thus, the very issues raised in this complaint are indeed currently being litigated in the ongoing Golden State company-wide GRC.<sup>30</sup> The many stakeholders involved in the GRC have had the opportunity to scrutinize this information and substantively contribute to the GRC. In fact, the City of Ojai has intervened and is a party representing its constituents on these issues.<sup>31</sup> Moreover, even Complainant himself voiced the very concerns included in the complaint at the GRC PPH held in Ojai on February 29, 2012, and attended by Administrative Law Judge Smith and DRA.<sup>32</sup> The transcript provided to Commissioner Sandoval contains over eleven pages of text attributed to Complainant, including all of the arguments in this complaint.<sup>33</sup>

Given the foregoing, the customer service issues that are raised in the complaint are properly addressed in the GRC and not by way of a separate consumer complaint. An additional hearing would be duplicative, inefficient, improper, and a waste of the Commission's valuable resources. Moreover, it would be contrary to Decision 10-12-059's determination that a separate process is not warranted. Thus, a one-off complaint is simply not the correct vehicle for the Commission to consider customer service issues or determine the reasonableness of its rates. This complaint should be dismissed due to the defects that render it incapable of stating a claim upon which relief may be granted.

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<sup>30</sup> Application 11-07-017.

<sup>31</sup> Protest of City of Ojai, California to the Application of Golden State Water Company for an Order Authorizing an Increase in Rates in its Region 1, Region 2, and Region 3 Customer Service Areas (Application 11-07-017) (August 19, 2011).

<sup>32</sup> Exhibit 6 at 802-811, 866-870.

<sup>33</sup> *Id.*

c. The Complaint Fails to Allege a Violation of Any Provision of Law or Order or Rule of the Commission

Pursuant to Section 1702 of the Public Utilities Code, a complaint must set forth “any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission.”<sup>34</sup> Thus, a complaint that fails to allege that a public utility has violated a specific law or order or rule of the Commission must be dismissed for failure to state a claim.<sup>35</sup>

Even if Complainant could properly bring a complaint to lower rates due to alleged poor customer service, which it cannot, Complainant has not made sufficient allegations with respect to customer service or water quality here to withstand a motion to dismiss. This is because the complaint does not allege a violation of the Commission’s order governing Golden State’s provision of water service. The Commission’s current rules regulating provision of water service (including water quality and customer service) by utilities operating under the Commission’s jurisdiction are set forth in General Order 103-A.<sup>36</sup> These rules involve detailed reporting requirements, telephone performance standards, billing performance standards, meter reading performance standards, work completion performance standards, and complaint response standards.<sup>37</sup> Not only does Complaint 12-05-012 fail to allege that Golden State has violated any of these requirements or standards, it does not even mention General Order 103-A at all. As a result, the complaint fails to identify any act or thing done or omitted to be done by Golden State

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<sup>34</sup> Cal. Pub. Utils. Code § 1702.

<sup>35</sup> See, e.g., *AC Farms Sherwood v. So. Cal. Edison Co.*, Decision No. 02-11-003 (Nov. 7, 2002); *Crain v. So. Cal. Gas Co., et al.*, Decision No. 00-07-045 (Jul. 20, 2000).

<sup>36</sup> General Order 103-A.

<sup>37</sup> *Id.*

in violation or claimed to be in violation of General Order 103-A (or any other applicable law or order or rule of the Commission), and, as such, must be dismissed for failure to state a claim.

In conclusion, Golden State understands that its customers have individual expectations for water service and is working every day to improve its business. However, as a regulated utility, Golden State's obligation is to conform to the standards set forth by the Commission, not those espoused by each of its thousands of customers. Because Complainant has not alleged, and cannot allege, a violation of General Order 103-A, the complaint should be dismissed with prejudice for failure to state a claim.

## **2. Complainant's Allegations Regarding Water Pressure Issues Fail to State a Claim**

While Complainant does not specifically raise adequate water pressure as an issue to be considered in this proceeding, it appears that all of Complainant's individual grievances are linked to an alleged water pressure problem.<sup>38</sup> But Complainant fails to allege that the operating pressure at his service connection is or has been below the standard for water pressure set forth in General Order 103-A in violation of any law or order or rule of the Commission.<sup>39</sup> To the contrary, Golden State has, at Complainant's request, recorded the water pressure levels in front of Complainant's home on more than one occasion, and the resulting readings demonstrate that Complainant's water pressure is above the minimum requirement set forth in General Order 103-

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<sup>38</sup> See Complaint 12-05-012 at Section (F).

<sup>39</sup> The Commission's General Order 103-A is the order that sets forth minimum pressure requirements for Class A water utilities. General Order 103-A at 30. General Order 103-A states that each potable water distribution system shall be operated in a manner to assure that the minimum operating pressure at each service connection throughout the distribution system is not less than 40 pounds per square inch ("psi") except during periods of new peak hour demand when the pressure may not be less than 30 psi. *Id.* Although Complainant does allege that water pressure in his home dipped below 30 psi on one isolated occasion due to a water main break, such a water main break qualifies as a reason for emergency interruption of service and an exemption from the minimum pressure requirement set forth in General Order 103-A. *Id.* at 12. Thus, even if it is true that Complainant's water pressure dipped below 30 psi on one isolated occasion (which has never been verified by Golden State), the complaint does not rebut the undisputed fact that the emergency water main break called for an exemption from minimum requirements at that time.

A.<sup>40</sup> In particular, the system minimum water system pressures in front of Complainant's home during the two periods of investigation never fell below 60 psi on any day measurements were taken by Golden State. As such, the system pressures in front of Complainant's home comply with General Order 103-A standards.

Thus, even assuming *arguendo* that Complainant's allegations of an "intermittent water pressure problem" are true, the complaint fails to state a claim as to water pressure because Complainant does not (and cannot) allege that the water pressure in his home violated any law or order or rule of the Commission. Of course, Complainant is free to raise his dissatisfaction with the Commission's minimum water pressure standards in the appropriate forum, but this baseless complaint should be dismissed with prejudice for failure to state a claim.

**B. The Complaint Fails to Comply with Rule 4.2(a) Due to Vagueness**

Under Commission Rules of Practice and Procedure Rule 4.2(a), in order to constitute a valid complaint:

The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired.

Here, the complaint is comprised of vague, ambiguous, and/or unintelligible questions and statements that do not provide Golden State or the Commission with adequate information regarding the specific grounds on which Complainant's challenge is based, the alleged injury to Complainant, or the exact relief requested. Instead, Section (F) of the complaint includes a lengthy narrative that strings together, without context, various statements of the Commission, block quotes from the testimony of one party to the current Golden State GRC, portions of PPH testimony, information from the Commission's water division, and Golden State's parent

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<sup>40</sup> Exhibit 4 at 2.

company's mission statement from an Internet website, among many other items. Further, Section (H) of the complaint contains no requested relief whatsoever, making it difficult, if not impossible for the Commission and Golden State to understand either the details of the complaint or the solution Complainant presents. As such, the complaint fails to comply with the requirements of Rule 4.2(a) and should be dismissed for vagueness.

#### IV. CONCLUSION

Golden State respectfully requests that the Commission dismiss the complaint in its entirety with prejudice. If the Commission is not inclined to dismiss the complaint in its entirety, Golden State respectfully requests that the Commission dismiss with prejudice those issues for which it deems dismissal is proper.

June 15, 2012

Respectfully submitted,



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