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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

**MOTION OF GERALD TRIMBLE,
REQUESTING A PREHEARING CONFERENCE RULING
TO BE SET ASIDE**

1. INTRODUCTION AND RECOMMENDATION

Pursuant to Rules 11.1 and 9.8 of the Commission's Rules of Practice and Procedure, Gerald Trimble hereby moves, with good cause, for an order to set aside the prehearing conference ruling¹ by ALJ Lakritz that the WRAM/MCBA was "preauthorized" for A.08-09-010 by Decision 08-08-030².

That ruling removed the issue of the WRAM/MCBA from being arguable from either a legal or a practicable standpoint within this proceeding with no legal express or definitive justification. It should be set aside.

¹ Verbal ruling at the very commencement of the prehearing conference of A.08-09-010 on November 10, 2008

² D.08-08-030 dated 8/21/08 within proceeding I.07-01-022

2. BACKGROUND

Investigative proceeding I.07-01-022 initiated January 11, 2007 instituted an Investigation to consider policies to achieve the Commission's conservation objectives for Class A water utilities.

Decision 08-08-030 of August 21, 2008 was issued which included discussion of WRAM/MCBA among other things and adopted several settlement agreements including that between parties GSWC and DRA of October 19, 2007.

GSWC in Application 08-09-010 on pages 7, 21 and 25 claimed a prior authorization of WRAM/MCBA for this proceeding referencing D.08-08-030 pages 14, 16, 39 (Findings of Fact No.7), 41 (Conclusions of Law 1, 2 and 5) and pages 41-42 (Order #1).

A protest of October 7, 2008 by Trimble refuted that either Decision 08-08-030 or its adoption of the settlement of October 19, 2007 between GSWC and DRA constituted any authorization for the implementation of these [WRAM/MCBA] ratemaking mechanisms [for proceeding A.08-08-010].

GSWC in its reply (to the Protest of October 22, 2008) claimed on page 4 that prior authorization of WRAM/MCBA for this proceeding existed on pages 14 and 16 of D.08-08-030.

At the A.08-09-010 prehearing conference on Monday November 10, 2008 ALJ Lakritz, immediately and without elaboration, ruled that the WRAM/MCBA had been authorized by D.08-08-030 via adoption of the settlement of October 19, 2007 between GSWC and DRA. During a comment period at the end of the prehearing conference Trimble posed a question to the ALJ

1 regarding Rule 12.5 of the Commission's Rules of Practice and Procedure
2 initiating a brief discussion.

3
4 Trimble then communicated with Commissioner Bohn and ALJ Lakritz on
5 November 11, 2008 by letter concerning the ruling on November 10, 2008,
6 presenting arguments in opposition to that ruling. A notice of ex parte
7 communication was simultaneously filed.

8
9 On November 14, 2008, a notice of a settlement conference was received
10 from Mr. Poirier to be held on November 21, 2008.

11
12 On November 19, 2008, Trimble provided parties Poirier, Yanney and Switzer
13 with a twelve page note outlining the significant issues and requirements for
14 discussion in the settlement conference of November 21, 2008. On that same
15 day, a draft settlement agreement was received by Trimble from Mr. Yanney
16 of GSWC.

17
18 A settlement conference was held on November 21, 2008 with all parties
19 present in person or telephonically.

20
21 A motion was jointly filed on December 11, 2008 by GSWC and the DRA to
22 adopt a *proposed settlement*.

23
24
25 Comment on the *proposed settlement* was filed by Trimble on January 5,
26 2009.

27
28 A notice of reassignment for Application 08-09-010 was filed January 15,
29 2009 replacing ALJ Jonathan Lakirtx with ALJ Gary Weatherford.

3. DISCUSSION

The adoption of the settlement agreement between parties GSWC and DRA of October 19, 2007 by Decision 08-08-030 does not constitute a preauthorization of WRAM/MCBA for proceeding A.08-09-010 as ruled by ALJ Lakritz in the prehearing conference. This is supported by the following reasons:

3.1 Rule 12.5 of the Commission's Rules of Practice and Procedure

Rule 12.5 of the Commission's Rules of Practice and Procedure (RPP), as authorized by California Law³, clarifies any implied authority of settlement principles or issues for current or subsequent proceedings as follows:

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.

Approval of any principle or issue in a settlement to apply to a subsequent proceeding requires an *express* provision directing such. Only an order would be such an *express* and unambiguous provision.

No such *express* provision existed in D.08-08-030 regarding WRAM/MCBA.

3.2 GSWC and DRA were Signatories to the Limits of a Settlement

The settlement agreement of October 19, 2007 between GSWC and DRA itself repeats the essence of RPP Rule 12.5 as follows⁴:

Furthermore, the parties intend that the approval of this Settlement Agreement by the Commission not be construed as a precedent or statement of policy of any kind for or against any Party in any current or future proceeding.

³ Public Utilities Code Chapter 9 Article 1 Section 1710 (a) All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, ...

⁴ Section I-B

1 Both GSWC and DRA affixed their signatures to that October 19, 2007
2 settlement, of which the above limitation was a part, thereby agreeing to the
3 fact that the content of that settlement *not be construed as a precedent or*
4 *statement of policy of any kind for or against any Party in any current or future*
5 *proceeding*. Clarity of intent cannot be plainer.
6

7 The *proposed settlement of December 11, 2008* also includes that very same
8 language as in the October 19, 2007 settlement. It appears it is treated as
9 meaningless “boilerplate”.
10

11 GSWC and DRA as signees to the above limitation to the relevance and
12 authority of these settlements implicitly acknowledged that their claim of
13 authority of the WRAM/MCBA for A.08-09-010 is false.
14
15

16 **3.3 Finding of Fact #7 included in D.08-08-030 by ALJ Grau**

17

18 The essence of the thrust and meaning of adoption-of-settlements in the
19 investigative proceeding I.07-01-022 is reflected by the statement-of-fact by
20 ALJ Grau in D.08-08-030⁵:
21

22 *2. The motions to adopt settlement agreements, comments, and testimony*
23 *provide a comprehensive record for consideration of the settlements.*
24

25 This statement-of-fact is not an *express order* and limits such adoption to a
26 role of *information-only*, which clearly it is.
27
28
29

⁵ Fact #2

1 **3.4 Omission of any Order in Decision 08-08-010 to Project Authority**

2
3 A Commission Decision includes a special section referenced as "ORDERS"
4 which can be clearly interpreted as *express* in nature.

5
6 No ORDER was included in D.08-08-030 to authorize the WRAM/MCBA for
7 host proceeding I.07-01-022, proceeding A.08-09-010 or any subsequent
8 proceeding.

9
10 If intent to provide such authorization of WRAM/MCBA for future proceedings
11 existed then it would not have been omitted! Intent is obvious from the
12 construction of that decision

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14
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16 **.3.5 Review of GSWC References of D.08-08-030 Authorizations**

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18
19 The following is a review of the GSWC references to D.08-08-030 claimed to
20 convey the authorization of WRAM/MCBA to proceeding 08-09-010:

21
22
23 Order #1 on pages 41-42 of D.08-08-030 is explicitly an order for the adoption
24 of the settlement agreement between GSWC and DRA of October 19, 2007
25 and includes no direct reference to WRAM/MCBA whatsoever as follows:

26 **IT IS ORDERED** that:

- 27 1. The following settlement agreements are approved and adopted:
28 - Golden State Water Company (GSWC)/Division of Ratepayer
Advocates (DRA) on conservation rate design trial program and
29 amendment to settlement except the interim rate design for
Region I;
- San Jose Water Company (San Jose)/DRA on conservation rate
design and pricing adjustment mechanism trial program;
- California Water Service Company (CalWater)/DRA on

1 conservation memorandum account;
2 - San Jose, TURN, NCLC, DisabRA, and LIF on customer
3 education and outreach and data collection and reporting
4 initiatives on June 12, 2008; and
5 - San Jose, TURN, NCLC, DisabRA, and LIF on customer
6 education and outreach and data collection and reporting
7 initiatives on June 12, 2008.

8 Page 41 (Conclusions of Law 1, 2 and 5) include predications of the potential
9 effect of settlement statements with no *express* order as follows:

- 10 1. The proposed settlements generally are reasonable in light of the whole
11 record, consistent with the law and in the public interest.
- 12 2. The conservation rate designs will advance the WAP's conservation
13 objectives and will be reviewed to determine whether they meet targeted
14 reductions in consumption. The GSWC WRAMs and MCBAs implement the
15 WAP's objective of decoupling sales and revenues to encourage successful
16 conservation programs. The San Jose pricing adjustment mechanism meets
17 San Jose's unique circumstances.
- 18 5. In order to promptly implement conservation rates, WRAM/pricing
19 adjustment mechanism, MCBAs, customer education and outreach, data
20 collection and reporting, and conservation memorandum accounts and changes
21 to those accounts, this decision should be effective immediately.

22 Page 39 (Findings of Fact No.7) is a statement of GSWC proposals and
23 contains no *express* order as follows:

- 24 7. GSWC proposes separate WRAMs for each ratemaking area, which will
25 track the difference between actual and adopted revenue and amortize over- or
26 under-collections if they exceed 2.5% of GSWC's prior year revenue requirement.

27 Page 14 is a discussion of WRAM and MCBA and its justification and is a
28 basic rephrasing of the GSWC settlement also with no *express* order as
29 follows:

3.2. WRAM and MCBA

GSWC and DRA propose separate WRAMs for each ratemaking area,
which will ensure recovery of the portion of GSWC's fixed costs that are
recovered through the quantity charge and all variable costs not included in the
MCBA. The WRAM will track the difference between adopted and actual
revenue. CFC recommends that we reject the proposed WRAM because it is
unlikely that the proposed conservation rate design will result in any revenue
loss to GSWC. GSWC and DRA state that without a WRAM a rate design that
is intended to promote conservation could substantially reduce GSWC's

1 earnings. The WAP supported the adoption of decoupling mechanisms due to
2 existing financial disincentives to conserve water. GSWC proposed reducing
3 monthly service charges, because it was concurrently proposing a WRAM. With
4 a WRAM, GSWC's earnings and revenue requirement would not be subject to
5 the fluctuation of sales resulting from reducing service charges and recovering
6 the costs captured in that portion of the service charges in quantity rates. (*See*
7 *generally* Exhibit 1, pp. 13-14, 17.) Increasing block rates also increase volatility in
8 sales, sales forecasts, and earnings. The proposed WRAM eliminates that
9 volatility. (*Id.* at 14-15.)

10 Page 16 includes discussion of the WRAM/MCBA and includes a statement of
11 the adoption of the Settlement Agreement but is devoid of any *express order*
12 relating to current or subsequent authorizations of the WRAM/MCBA as
13 follows:

14 combined balance of the accounts will be amortized. Combined undercollections
15 will be passed through as surcharges on volumetric charges;
16 combined over-collections will be passed through as surcredits on volumetric
17 charges.

18 **3.2.1. Adoption of Conservation Rate Design and
19 WRAM/MCBA Settlement Agreement as
20 Amended**

21 We have reviewed the conservation rate design and WRAM/MCBA
22 settlement as amended and CFC's objections to the specific rate design and
23 decoupling WRAM. We find GSWC's trial conservation rate design will advance
24 our conservation objectives; it incorporates increasing block rates for residential
25 customers and moves its nonresidential customer class to CUWCC's requirement
26 to recover over 70% of revenues through the quantity charge. We will review
27 this rate design to determine whether it meets targeted reductions in
28 consumption. If it does not meet these goals or is unlikely to meet future goals,
29 GSWC will propose rate designs that will accomplish these goals.
GSWC's WRAM and MCBA will balance utility and ratepayer interests
and will ensure neither is harmed nor benefits from the adoption of conservation
rates. The WRAM and MCBA implement the WAP's objective of decoupling
sales from revenues to encourage successful conservation programs. The
GSWC/DRA settlement agreement is reasonable in light of the record, consistent
with the law, and in the public interest and will be adopted.

It is apparent that the investigative proceeding I.07-01-022 by the
Commission has espoused little objection to the course proposed by GSWC
and the DRA in their settlement agreement of October 19, 2007, but this is
far from an *express order* of its implementation.

4. CONCLUSION

Public Utilities Code Chapter 9 Article 1 Section 1710 (a) is express and unmistakable in its decree of the authority of the Commission's Rules of Practice and Procedure:

All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission,

...

Rule 12.5 of the Commission's Rules of Practice and Procedure is express and unmistakable in the clarity with which it limits the authority of settlement principles or issues for current or subsequent proceedings:

:

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.

The term *expressly* does not mean casual discussion of merits, the discussion of what the settlement "will" do or provide, or why something should be done. A provision to approve a principle or issue within a settlement must be definitive, unambiguous, unmistakable, and specific. A provision to authorize a principle or issue within a settlement to apply to a future proceeding must be just as definitive, unambiguous, unmistakable, and specific.

An express declaration of such an authorization in a decision could be no less than an *order*.

Decision 08-08-030 is explicitly and unequivocally devoid of any *express* pronouncement concerning the authorization of any settlement principle or issue either for the current proceeding (I.07-01-022) or this subsequent proceeding (A.08-09-010).

1 The ruling of ALJ Lakritz concerning the preauthorization of the WRAM/MCBA
2 for Proceeding 08-09-010 is unjustified and without any support of factual or
3 legal principle whatsoever.

4
5 Evaluation of the merits of WRAM/MCBA within this proceeding is not only
6 appropriate but also reasonable, especially relative to areas not considered in
7 the I.0701022 investigation.

8
9 It is thereby requested that the ruling by ALJ Labritz of the prior authorization
10 of WRAM/MCBA be reconsidered and set aside for proceeding A.08-09-010
11 to be consistent with California Law and to further the cause of conservation,
12 that original motivation for I.07-01-022.

13
14
15
16 January 27, 2009

respectfully submitted,

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20 

21 Gerald Trimble
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1 APPENDIX A

2 **Notice of Availability**

3
4 Title:

5 **MOTION OF GERALD TRIMBLE,**
6 **REQUESTING A PREHEARING CONFERENCE RULING**
7 **BE SET ASIDE**

8
9 Contents:

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

10 Link/URL

11 <http://personal.linkline.com/trimble/0809010/Motion0.pdf>

12 Date available:

13 1/27/09

14 Name and contact information:

15 Gerald Trimble

16 805-937-2518

17 jerryt@linkline.com

1 **Certificate of Service**

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

3
4 **MOTION OF GERALD TRIMBLE,**
5 **REQUESTING A PREHEARING CONFERENCE RULING**
6 **BE SET ASIDE**

7
8 on all known parties to A.08-09-010 by sending a Notice of Availability via electronic
9 mail and by mailing a properly addressed paper copy by first-class mail with postage
10 prepaid to each party named in the official service list without an electronic mail address.

11 Executed on January 27, 2009 at Santa Maria, California

12
13 

14
15
16 _____
17 Gerald Trimble

***** SERVICE LIST *****

Last Updated on 15-JAN-2009 by: JP4
A0809010 LIST

All persons herein listed were served by Notice
of Availability on 1/27/09.

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