

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of Golden State Water Company (U133W) for a Certificate of Public Convenience and Necessity to Construct and Operate a Water System in Sutter County, California; and to establish Rates for Public Utility Water Service in Sutter County, California.

Application 08-08-022  
(Filed August 29, 2008)

**PREHEARING CONFERENCE STATEMENT  
OF THE DIVISION OF RATEPAYER ADVOCATES**

**I. INTRODUCTION**

In accordance with the Administrative Law Judge's ("ALJ") Ruling issued on June 12, 2011, the Division of Ratepayer Advocates ("DRA") files the following prehearing conference ("PHC") statement. The ruling directed each party to meet and confer and then file an updated PHC statement on the following issues:

- (a) Whether said party believes evidentiary hearings (EH) are still necessary, and if so, what outstanding issues of material fact said party anticipates to still remain in controversy and be addressed during the EH;
- (b) Whether said party believes any briefing is still necessary, and if so, what outstanding issues of law said party anticipates to still remain in controversy and be addressed via briefing;
- (c) Proposed schedule outlining dates for any further discovery, filings of testimony, briefing dates and hearing dates; and
- (d) Any and all other issues affecting the final disposition of the above-entitled proceeding, including any raised in the pending Joint Motion for Approval of Settlement Agreement and the Division of Ratepayer Advocates' Opposition thereto.

On June 22, 2011 the parties met and conferred on the aforementioned issues. While the parties are in near agreement with the issues in dispute that require evidentiary hearings, the parties were not able to agree to a mutually acceptable schedule.

## **II. DISCUSSION**

### **A. Evidentiary Hearings are Necessary**

As demonstrated in the comments filed by DRA and reply comments filed by the Joint Parties<sup>1</sup> regarding the Joint Parties' proposed settlement agreement, evidentiary hearings on the settlement agreement are necessary.<sup>2</sup> It should be noted that most of the issues that remain in dispute would have been covered in the original Phase 2 of this proceeding. The Joint Parties did not separately identify the Phase 2 issues when they filed their settlement agreement on March 14, 2011 that purports to resolve all Phase 1 and 2 issues. One remaining issue that is carried over from Phase 1 relates to the water supply agreement between GSWC and Natomas Mutual Water Company. In a sense this issue could be seen as a new matter since the settlement agreement replaced the *Water Transfer Agreement* originally contained in the Amended Application with a new water supply agreement now known as the *Water Wholesale Agreement*.

DRA recommends that the Commission resolve the following issues in evidentiary hearings:

1. Water Wholesale Agreement
  - a. Necessity of Water Wholesale Agreement (WWA) with Natomas;
  - b. Cost of water supply;
  - c. Availability payments under the WWA;
  - d. Cost escalation provisions of the WWA;
  - e. Interim fees paid to Natomas;

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<sup>1</sup> The Joint Parties consist of the following parties: Golden State Water Company ("GSWC"), County of Sutter and Sutter County Water Agency (collectively the "County"), Sutter Pointe Landowners/Developers ("Sutter Pointe Developers"), and the Robbins Ad-Hoc Committee ("Robbins").

<sup>2</sup> See DRA Comments (April 13, 2011); see also Joint Parties' Reply Comments (April 28, 2011).

- f. The reasonableness of a water supply that is surplus to the needs of Natomas shareholders;
  - g. GSWC's delivery of groundwater to Natomas;
  - h. Early termination provisions and remedies for breach under the WWA;
  - i. Alternatives to the WWA
2. Proposed Cost of the South Sutter County Service Area (SSCSA)
    - a. Selection of Alternative B
    - b. GSWC's recovery of costs
  3. Funding mechanism for the SSCSA
    - a. Deviation from Rule 15
  4. Ratemaking /setting issues
    - a. Effect of GSWC's alternative funding mechanism (deviation from Rule 15) on rates
    - b. Proposal to use Arden-Cordova as a proxy for initial rates
    - c. Use of balancing account

**B. Briefing**

DRA does not expect additional briefing other than briefing with regard to the issues of material fact identified above. The time for filing briefs should be established during or after the evidentiary hearing.

**C. Proposed Schedule**

As DRA previously explained in comments, the settlement agreement, filed over 2 ½ years after GSWC filed its Amended Application in August 2008, effectively presents the Commission with a new application.<sup>3</sup> While the ALJ's June 14, 2011 ruling indicates that there is no justification for DRA's request for six additional months of discovery, DRA's request is justified in view of the complexity of the Phase 2 issues (e.g., inherent difficulty in developing just and reasonable rates for a community that

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<sup>3</sup> See DRA Comments (April 13, 2011) at 7-8.

currently does not exist), the new issues raised by this “new application” (e.g., deviation from Rule 15), the marked differences between GSWC’s August 2008 application and the settlement agreement (e.g., substitution of the *Water Transfer Agreement* with the *Wholesale Water Agreement*), and the fact that DRA has only had since March 14, 2011 to review and conduct discovery on this “new application.”

GSWC’s settlement agreement with the Joint Parties is not a mere amendment. This “new application” consisted of 62 pages of new testimony and a Joint Motion for Approval of the Settlement Agreement, containing the settlement agreement and totaling nearly 200 pages. Given that DRA had approximately a year from the filing of GSWC’s Amended Application to serve testimony on the Phase 1 issues,<sup>4</sup> which were not as complex as the Phase 2 issues, and that the Joint Settling Parties had at least 17 months to develop the settlement agreement, (and have been repeatedly indulged by the Commission in their request for additional time to negotiate the agreement), DRA’s request for 6 months to present its case (serve testimony) on the settlement agreement falls well within these time frames. Moreover, it would have been impractical and a waste of DRA’s limited resources to conduct discovery on any of the Phase 2 issues prior to the settlement filing on March 14, 2011 because the final settlement terms were not made known to DRA until that time. Thus, DRA’s request, for merely 6 months from the settlement filing, to adequately present its entire case is reasonable and justified.

DRA further notes that under the Commission’s rate case plan for general rate case applications submitted by Class A water utilities, applicants are severely constrained in the scope of the amendments to original applications that can be submitted.<sup>5</sup> Under the rate case regime, an amendment as substantive as what GSWC has proposed with the settlement agreement would not be allowed.

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<sup>4</sup> See ALJ Ruling (August 26, 2009). GSWC filed its Amended Application on August 29, 2008 and DRA served its testimony on September 24, 2009.

<sup>5</sup> See D. 07-05-062, *Opinion Adopting Revised Rate Case Plan For Class A Water Utilities*, issued May 24, 2007.

DRA understands that the developers (who are one of the Joint Parties in this case) contend that the Commission should move with alacrity in resolving this application; however, their request for rapid disposition should be considered in light of the protracted delays that have already plagued this proceeding (that all of the Joint Parties have some responsibility for) and the lack of demand for new residential developments in the Sacramento area. In short, allowing DRA sufficient time to conduct an appropriate review of this “new application,” including presenting the Commission with alternative proposals, will not unduly burden any of the Joint Parties, including the applicant.

For the aforementioned reasons, DRA proposes the following schedule:

|  |                     |
|--|---------------------|
| DRA serves testimony                   | September 15, 2011  |
| Joint Parties serve rebuttal testimony | September 29, 2011  |
| Evidentiary Hearing begins             | October 11-14, 2011 |

**D. Additional Issues (Robbins Acquisition)**

The Joint Parties’ settlement agreement at section 6.3.1 states in relevant part:

Within fourteen (14) days following the approval of this Agreement by the CPUC, which approval has become final and no longer subject to appeal, GSWC shall submit an appropriate request with the CPUC for approval of the Water System Purchase and Sale Agreement. None of the Parties shall oppose GSWC’s request. If this Agreement is not approved by the CPUC, the Water System Purchase and Sale Agreement shall be void and of no effect.

DRA opposes the inclusion of the Robbins acquisition in this proceeding because it is not germane to the question of whether it is in the public convenience and necessity to grant GSWC a CPCN to serve the SSCSA.<sup>6</sup> However, because the Joint Parties incorporated the Robbins acquisition into the settlement agreement, the Commission should make

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<sup>6</sup> The Joint Parties acknowledge that “they are not seeking the Commission’s approval for the acquisition, nor asking the Commission to review the acquisition as part of this proceeding.” Joint Motion (March 14, 2011) at 60-61.

clear in this proceeding that if the Commission accepts the settlement agreement, either in its current form or with conditions, (a move that DRA opposes), the final decision in this proceeding should not have any bearing on the ultimate disposition of the Robbins acquisition. Moreover, DRA may discuss (in its brief) the proper procedure for handling the Robbins acquisition since the Joint Parties have put this at issue by including it in their settlement agreement.

### III. CONCLUSION

For the foregoing reasons, the Commission should allow DRA to properly evaluate the complex issues raised in the Joint Parties' settlement agreement, which is properly characterized as essentially a new application, by holding evidentiary hearings on the settlement agreement and adopting DRA's proposed schedule.

Respectfully submitted,

/s/ HIEN C. VO

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