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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Jose Water Company (U168W) for an Order authorizing it to increase rates charged for water service by \$47,394,000 or 21.51% in 2013, by \$12,963,000 or 4.87% in 2014, and by \$34,797,000 or 12.59% in 2015.

Application 12-01-003
(Filed January 3, 2012)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
NOTICE OF INTENT TO CLAIM COMPENSATION**

1. Summary

Following review of the Notice of Intent (NOI) filed by Brush & Old Well Road Mutual Water Company, Big Redwood Park Mutual Water Company, Mountain Summit Mutual Water Company, Oakmont Mutual Water Company, Ridge Mutual Water Company, and Villa Del Monte Mutual Water Company, (jointly referred to as the Six Mutuals), this ruling makes a preliminary finding that the Six Mutuals are eligible to request intervenor compensation in this proceeding. No opposition to the NOI has been filed.

2. Standards for Notice of Intent Review

Public Utilities (Pub. Util.) Code § 1804(a)(1) states that a "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference (PHC) is held, file and serve on all parties to the proceeding an NOI to claim compensation." Pub. Util. Code § 1804(a)(2) sets forth the information that an NOI must include.

Pursuant to Decision (D.) 98-04-059, the preliminary ruling on eligibility must determine whether the intervenor is a customer, as defined in Pub. Util. Code § 1802(b). The intervenor may qualify as a customer in one of three ways: as a participant representing consumers (Pub. Util. Code § 1802(b)(1)(A)); a representative authorized by a customer (Pub. Util. Code § 1802(b)(1)(B)); or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers (Pub. Util. Code § 1802(b)(1)(C)). Participation in Commission proceedings by parties representing the full range of affected interests is important and assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

Pub. Util. Code § 1804(a)(2)(B) provides that only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Pub. Util. Code § 1802(g) defines “significant financial hardship” to mean “either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

If the intervenor includes a financial hardship showing in the NOI, the preliminary ruling shall address the showing rather than deferring it to the request. Pub. Util. Code § 1804(b)(1) provides that “[a] finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.”

In addition to the required assessment of eligibility, the preliminary ruling may address other issues raised by the NOI, such as nature and cost of planned participation.

3. Discussion

3.1. Timeliness of Notice of Intent Filing

The Six Mutuals timely filed its NOI on March 12, 2012, within 30 days after the PHC was held on February 13, 2012.

3.2. Customer Category

The Six Mutuals are a group of six mutual water companies that purchase water from San Jose Water Company (SJWC) for resale to their respective members at cost (See Pub. Util. Code § 2725). Pursuant to Pub. Util. Code § 1802(b)(1)(A) a customer can be defined as “A participant representing consumers....” The Six Mutuals are just such a participant that represents the interest of its members, who consume the water purchased from SJWC. The Commission defined this type of participant in D.98-04-059,¹ stating “A participant representing consumers is an actual customer who represents more than his own narrow self-interest; a self-appointed representative.” Therefore, the Six Mutuals meet the first definition of a customer.

3.3. Financial Hardship

Pub. Util. Code § 1802(g) provides that "significant financial hardship" for Category 1 customers occurs when the economic interest of the customer is small in comparison to the costs of effective participation in the proceeding.

The Six Mutuals each serve between 8 and 136 members. All directors and

¹ See 79 CPUC2d 628 at 648.

officers serve as unpaid volunteers. The Six Mutuals also state that a significant number of their members (the ultimate consumers of the water purchased from SJWC) are low-income; many of them live in mobile homes, recreational vehicles, and homes as small as 550 square feet.

The Six Mutuals assert that they meet this standard, providing bills from SJWC that show how small their bills are in comparison to the cost of participation. They also provide individual financial statements showing that each of the mutuals either barely covers its costs or is operating at a loss. Even by banding together, the Six Mutuals assert that neither they nor their members may afford the estimated cost for their joint participation. We find the Six Mutuals have shown that their participation in this proceeding without the potential of compensation would cause a significant financial hardship to the Six Mutuals and their members, as set forth in Pub. Util. Code § 1802(g).

Notwithstanding this finding, the Six Mutuals have presented an unrealistic budget for their participation in this proceeding. Specifically, their estimated cost of participation of \$192,400 seems disproportionately high, given the number of members served by the Six Mutuals and the dollars at stake for those members from SJWC's proposed increase in rates. Pursuant to Pub. Util. Code §§1801, 1801.3, and 1802, compensation is awarded only for **reasonable** costs incurred. In addition, an intervenor's participation must be productive (*see* Pub. Util. Code § 1801.3(f)), which means that the costs for which compensation is sought should have a reasonable relationship to the results achieved. Finally, the Six Mutuals should note that when requesting compensation at the completion of this proceeding, they should refer to Resolution ALJ-267, which provides the most current hourly rates used in the Commission's review of claims for intervenor compensation.

3.4. Participation and Coordination

Pub. Util. Code § 1804(a)(2)(A)(i) requires an NOI to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted.

The Six Mutuals are active participants in this case, having filed a protest to SJWC's application, and participated in the PHC. The Six Mutuals state that they intend to conduct discovery, present testimony, participate in evidentiary hearing for direct and cross-examination, submit briefs and comments on proposed decision, and participate as needed in *ex parte* communications.

The Six Mutuals and the Division of Ratepayer Advocates (DRA) both represent ratepayer interests; however, the Six Mutuals represents only the interests of mutual water utility customers of SJWC while DRA represents all ratepayers.

The Six Mutuals are directed to actively coordinate with DRA in this proceeding to ensure that the parties address different issues or make distinct arguments on common issues. Coordination of this nature will minimize duplication and will ensure that any unavoidable duplication will complement or supplement the work of DRA.

3.5. Conclusion

The Six Mutuals timely filed their NOI. They meet the first definition of a "customer" and have demonstrated financial hardship. Therefore, the Six Mutuals are eligible to apply for intervener compensation in this proceeding. However, a finding of significant financial hardship in no way ensures compensation. (Pub. Util. Code § 1804(b)(2).) They are also put on notice that they should coordinate their participation in the current proceeding with DRA to avoid duplication.

The Six Mutuals are virtually unique among intervenors seeking compensation for participation at the Commission. As resellers, at cost, of water from SJWC to their members, who are the ultimate consumer of the water, they are uniquely well-qualified to represent the interests of their members. At the same time, the Six Mutuals do not stand to benefit financially from successful representation: They cannot expand their business, and their revenues are constrained by statute. Furthermore, because their members are few in number and limited in resources, they have little ability, if any, to pass on their costs of participation to their members.

Therefore **IT IS RULED** that:

1. Brush & Old Well Road Mutual Water Company, Big Redwood Park Mutual Water Company, Mountain Summit Mutual Water Company, Oakmont Mutual Water Company, Ridge Mutual Water Company, and Villa Del Monte Mutual Water Company, jointly referred to as the Six Mutuals, are customers as that term is defined in § 1802(b)(1)(C) and have met the eligibility requirements of § 1804(a), including the requirement that they demonstrate significant financial hardship.

2. Brush & Old Well Road Mutual Water Company, Big Redwood Park Mutual Water Company, Mountain Summit Mutual Water Company, Oakmont Mutual Water Company, Ridge Mutual Water Company, and Villa Del Monte Mutual Water Company, jointly referred to as the Six Mutuals, are eligible to file a claim for compensation in this proceeding.

3. Eligibility to claim compensation does not ensure that compensation will be awarded.

Dated May 10, 2012, at San Francisco, California.

/s/ SEANEEN M. WILSON

Seaneen M. Wilson
Administrative Law Judge