

WATER/FLC:jrb

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION NO. W-4601

May 25, 2006

R E S O L U T I O N

(RES. W-4601), SUSPENDS GOLDEN STATE WATER COMPANY'S REQUEST TO WITHDRAW WATER SERVICE UNDER CONTRACT TO THE CALIPATRIA STATE PRISON AND ORDERS GOLDEN STATE WATER COMPANY TO NEGOTIATE WITH THE CALIPATRIA STATE PRISON, OR ELSE FILE BY APPLICATION

SUMMARY

This Resolution suspends Golden State Water Company's (Golden State, SCWC or the Company) Advice Letter (AL) No. 1206-W and orders the Company to negotiate a tariff rate with Calipatria State Prison (the Prison) as discussed in its last General Rate Case decision. If the negotiations do not produce a new contract, Golden State is authorized to file an application to determine just and reasonable rates for the Prison.

BACKGROUND

Golden State filed AL No. 1206-W on January 5, 2006 to withdraw water service under contract to the Prison, which is controlled by the Office of the Secretary, California Department of Corrections and Rehabilitation (the Department or CDCR) and provide service under tariffed rates, claiming the filing was authorized by its last General Rate Case Decision (D.) 06-01-025, January 12, 2006. The dicta in that decision states in part:

"5.19 Contract to Serve the Calipatria Prison

"The Department purchases about 40% of the output of SCWC's Calipatria water treatment plant, and is by far SCWC's largest customer in Region III.

"As discussed elsewhere in today's decision, SCWC has recently constructed a significant upgrade to this plant. SCWC and the Department discussed but were unable to resolve modifications to the Department's charges to recover the costs of the plant upgrade.

“In its application, SCWC included service to the prison at the unmodified prices pursuant to the contract. ORA in its report opposed retaining the special contract rate for the prison and recommended that the prison pay the otherwise applicable tariff rate, which results in \$428,463 in additional annual revenue for SCWC.

“Shortly after ORA submitted its report, the Department intervened in this proceeding. In its closing brief, the Department explained that it had been excluded from any discussions with SCWC regarding the type of plant or extent of upgrades to be made, and that SCWC simply expected the Department to pay a share based on its usage. The Department stated that the cost estimates it has received from SCWC have “escalated at every turn” and no “meaningful cost data” has been forthcoming. The Department was similarly dissatisfied with SCWC’s cost presentations in this proceeding, expressing surprise at the “obfuscation and lack of clarity in the submittal for the financial costs of the proposed new Calipatria plant.” The Department estimated that it could construct a water treatment plant to meet the prison’s needs for about \$3 million. Extrapolating from that estimate, the Department suggested that a reasonable cost for SCWC’s Calipatria plant would be about \$7.5 million. The Department supported, however, ORA’s recommendation that about \$10 million should be included in rate base. The Department made no specific recommendation regarding any changes to the rate it pays.

“In the overall stipulation, SCWC agreed with ORA that absent an alternative agreement, the prison should pay the otherwise applicable tariff rate.¹ In its reply brief, SCWC specifically requested for the first time that the Commission permanently suspend the prison’s discounted tariff. SCWC, however, provided no legal analysis supporting its authority to make such a request in this docket.

“We are in no position to consider SCWC’s tardy request to suspend the Department’s tariff in today’s decision. SCWC should use the same process and notice requirements that it had used to seek approval, namely the advice letter process, to seek suspension of this special contract.

ORA and the City of Claremont also requested that shareholders be responsible for any revenue requirement “shortfall” caused by

¹ SCWC did not agree to the ratemaking treatment for the change in revenue from the prison.

implementing changes to the prison rate. We agree. SCWC has done a poor job of dealing with this issue. The Department is SCWC's largest customer and is openly threatening to leave the system. SCWC should have resolved this issue well before it filed the application. A customer that comprises 40% of the usage must be handled carefully, and the balance between striking a special deal and losing a major customer is a delicate one. Such questions should not be recognized for the first time in rebuttal testimony. The record in this proceeding leaves the impression that SCWC is defaulting the issue to the Commission without a thorough analysis of the risks and a comprehensive plan to address any impacts. The Department currently pays almost \$1 million each year. Losing a customer of this size could substantially reduce operating revenues. We do not intend to insulate SCWC from any operating revenue consequences of its delay in resolving this delicate balance.

"SCWC's Region III test year and escalation years analysis shall show the prison taking service at its projected usage levels at the otherwise applicable Region III tariff rate, unless and until the Commission approves a different rate for the prison.² In this way, SCWC will bear any shortfalls caused by delay in implementing a new rate for the prison." (D.06-01-025, pages 60-63)

This issue is not addressed in the Findings, Conclusions or Ordering Paragraphs, other than to accept the settlement, which is calculated based on charging the Prison tariffed rates.

Golden State's comments on the proposed decision are characterized as follows:

"10. Calipatria Prison Contract

"SCWC identified no factual or legal errors in the proposed decision, but described the result as "unfair." SCWC is responsible for ensuring that it provides reasonable service to the prison. ORA contended that exempting the prison from any costs of the new water treatment plant was unreasonable, and the proposed decision adopted ORA's position. Should SCWC negotiate, and the Commission approve, an alternative

² When the Commission approves a different rate, it shall address any on-going revenue deficiency.

tariff rate for the prison, any revenue requirement deficiency must be documented and addressed.” (D.06-01-025, page 76)

NOTICE AND PROTESTS

The advice letter was sent to the standard service list. On January 26, 2006 the Department filed a protest to the advice letter. It stated that the advice letter “violates a contractual right of CDCR and is unfair...” It claims that the contract requires both parties to agree to any changes and that any movement toward charging the Prison tariffed rates “does not address the significant contribution CDCR paid to get service to the prison when it was built.”

In its response to the protest, dated January 31, 2005 (sic), Golden State wants the advice letter “decided upon its merits.” It claims that the rates for the prison were “actually litigated and decided in... Decision 06-01-025.” It states that “the Commission imputed GSW’s revenue recovery by including the Department of Corrections at the Region III tariff.”

DISCUSSION

Water Division has reviewed this advice letter as required by Decision 05-01-032, January 13, 2005.³ In that decision the Commission disposes of problematic advice letters by saying when they raise “material factual issues requiring evidentiary hearing, the Industry Division will reject the advice letter without prejudice.” That is the case here.

If it had followed the recommendations in the decision, Golden State would have worked out its differences with the Prison by negotiation, as water utilities normally do for special contracts.⁴ It would then file by advice letter to replace the existing contract with the renegotiated one, or, if the parties agree, to revoke the contract and have Golden State serve the Prison at tariffed rates. To rely on a decision that does not specifically modify or cancel the existing contract as justification for eliminating an

³ In Rulemaking 98-07-038, July 13, 1998, Rulemaking for the purpose of revising General Order 96-A regarding informal filings at the Commission.

⁴ “If the utility has contracts to provide water, assume that the utility can renegotiate the same percentage increase for those contracts as for tariffed service (footnote omitted).” Standard Practice U-3-SM, Standard Practice For Preparing Results Of Operation Reports For General Rate Increase Requests Of Water Utilities Other Than Major Companies, paragraph 41.

existing, freely entered into, contract is not sufficient. Additionally, while it might be a small percentage of Golden State's revenues, the additional amount of money the Prison would have to pay is not inconsequential and does not qualify as an increase "that is minor in nature" as allowed in General Order 96-A, Section VI.⁵

The protest by the Prison raises issues of equity and cost allocation that are not resolvable by the advice letter process. If not resolved by negotiation, this request should be made by application.

COMMENTS

Public Utilities Code Section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, the draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from the date of its mailing.

FINDINGS

1. Golden State filed AL No. 1206-W, January 5, 2006 to withdraw water service under contract to the Calipatria State Prison (Prison) and provide service to the Prison under tariffed rates.
2. The Office of the Secretary, California Department of Corrections and Rehabilitation (CDCR), filed a protest to the advice letter on January 26, 2006.
3. Golden State replied on January 31, 2006.

THEREFORE IT IS ORDERED THAT:

1. Golden State Water Company's Advice Letter No. 1206-W is suspended.

⁵ According to Golden State, if approved, the Advice Letter would result in an increase in its Region III annual revenue of \$428,423 or 0.54%

2. Golden State Water Company shall attempt to resolve this dispute by negotiation.
3. If resolved by negotiation, Golden State Water Company shall supplement this advice letter to:
 - a. Substitute the new contract for the existing one; or
 - b. Establish a tariff for Service to Prison at the renegotiated rates.
4. If resolved by negotiation, the supplement shall also modify existing rates to make up for any shortfall.
5. If this dispute cannot be resolved by negotiation within 90 days of the effective date of this resolution, Golden State Water Company is authorized to file to resolve it by application.
6. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 25, 2006; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director