

Decision 06-11-015 November 9, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN JOSE WATER COMPANY (U 168 W) for an Order authorizing it to increase rates charged for water service by \$14,646,000 or 8.54% in 2007, by \$5,196,000 or 2.78% in 2008, and by \$6,246,000 or 3.26% in 2009.

Application 06-02-014
(Filed February 15, 2006)

OPINION APPROVING GENERAL RATE CASE SETTLEMENT

1. Summary

This decision approves the General Rate Case (GRC) settlement between San Jose Water Company (SJWC) and the Commission's Division of Ratepayer Advocates (DRA). The revenue increase approved today, when adjusted to reflect revenue changes attributable to two advice letter filings in 2006, will yield the following net revenue increases: \$3,488,000 or 2.00% in 2007; \$5,402,000 or 3.02% in 2008; and \$3,959,000 or 2.15% in 2009. A residential customer with a ¾" meter who uses approximately 1,500 cubic feet (CF) of water will see a bill increase of about \$1.90 in 2007 (from \$44.11 to \$46.01 over a two-month period), or approximately 4.31%. Bills for business accounts will increase by no more than 3.43% in 2007.

We refer the issue of how to provide cost-effective notice for public participation hearings to our next rate case plan review. We also require SJWC

to file an application within 120 days of today's decision which contains its proposals for implementation of the Water Action Plan.

2. Background

SJWC, a Class A water utility,¹ provides water services to residential and industrial customers in parts of San Jose and Cupertino, and in Campbell, Los Gatos, Monte Sereno, and Saratoga, as well as in contiguous territory in Santa Clara County. SJWC's last GRC was resolved by Decision (D.) 04-08-054. SJWC is a wholly-owned subsidiary of San Jose Water Corporation. The holding company also owns approximately 6% of California Water Service Group.

The instant application constitutes a request for a general rate increase in a single district.

3. Procedural History

DRA filed a timely protest to the application on March 21, 2006 and entered an appearance at the prehearing conference (PHC) on April 19, 2006. The Assigned Commissioner's May 2, 2006 scoping memo set evidentiary hearings for July 12-18, 2006. Prior to the hearings, DRA and SJWC entered into settlement negotiations, reached a settlement in principle, convened a settlement conference, and asked the Administrative Law Judge (ALJ) to take the hearings off-calendar. The ALJ did so.

Thereafter, by motion filed July 14, 2006 and supplemented July 18, 2006, Great Oaks Water Company (Great Oaks) sought to intervene. SJWC and DRA each filed an opposition on August 1, 2006 and Great Oaks filed a reply on August 17, 2006. On August 28, 2006, DRA and SJWC filed a joint motion

¹ A Class A water utility has more than 10,000 service connections.

requesting adoption of their Settlement. Though the ALJ had not ruled on Great Oaks' motion for intervention, at her direction the motion and Settlement were served on Great Oaks. On September 6, 2006, the ALJ denied Great Oaks' motion on the grounds that this Commission lacks jurisdiction to resolve Great Oaks concerns, which relate to the Santa Clara Valley Water District's water supply management policies and groundwater pumping rates. We affirm the ALJ's ruling today. On October 13, 2006, DRA and SJWC filed a Joint Response to the ALJ's request that they supplement the Settlement to address specific issues raised in the scoping memo (Joint Response).

4. Legal Standard for Review of All-Party Settlement

The parties represent that the Settlement Agreement is an uncontested "all-party" settlement. In such cases, the Commission applies two complementary standards to evaluate the proposed agreement. The first standard, set forth in Rule 12.1(d) of the Commission's Rules of Practice and Procedure (Rule or Rules), which is applicable to both contested and uncontested agreements, requires that the "settlement is reasonable in light of the whole record, consistent with law, and in the public interest." The second standard, articulated in *San Diego Gas & Electric Company (SDG&E)*, D.92-12-019, 46 CPUC 2d 538 (1992), applies specifically to all-party settlements and requires that:

- a. The proposed all-party settlement commands the unanimous sponsorship of all active parties to the proceeding.
- b. The sponsoring parties are fairly representative of the affected interests.
- c. No settlement term contravenes statutory provisions or prior Commission decisions.

- d. Settlement documentation provides the Commission with sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

SJWC and DRA are the only parties to this proceeding and both are signatories to the Settlement. Each party actively participated in all aspects of the proceeding, conducting discovery and developing comprehensive prepared testimony. SJWC was represented by knowledgeable representatives (the utility's Director of Regulatory Affairs and the attorney whom the utility retains). DRA, which has a mandate to represent ratepayer interests, assigned knowledgeable staff and counsel. We conclude that the affected utility and ratepayers interests were fairly represented. Thus, the Settlement meets the first and second criteria of the all-party settlement guidelines. We examine the third and fourth criteria and the Rule 12.1(d) standard below, in connection with our review of the Settlement itself.

5. Overview of the Settlement Terms

The DRA/SJWC Settlement is Attachment A to today's decision and the parties' Comparison Exhibit is Attachment B.² The parties represent that the Settlement meets the remaining requirements of *SDG&E, supra*, and that as Rule 12.1(d) requires, the Settlement is reasonable in light of the record, consistent with the law, and in the public interest. Below, we review the

² To minimize unnecessary duplication and resulting confusion, we have appended the Settlement without any attachments. The parties' Comparison Exhibit, Attachment A to the Settlement, is instead made Attachment B to today's decision. The Settlement's Attachment B (summary of earnings at January 1, 2006 rates) and Attachment C (summary of earnings at July 3, 2006 rates) have been excluded because they are superseded by Attachment D to today's decision, the adopted summary of earnings.

Settlement's major terms. Our discussion necessarily refers to the parties' October 13, 2006 Joint Response to the ALJ's request for additional information responsive to the scoping memo. The scoping memo directs parties to show how their positions (a) promote both reasonable rates and short- and long-term utility viability; (b) affect the utility's ability to ensure water quality in the short and long term; (c) increase customer and utility conservation incentives; (d) affect infrastructure development and investment; (e) moderate rate impacts on low-income customers; and (f) make the Commission's regulatory and decision-making processes more timely and efficient.

Our overview looks first at revenues, next the three issues the parties' PHC presentations suggested were most likely to prove contentious (return on equity; total water production cost balancing account; water quality memorandum account) and then, other issues.

5.1 Revenues

Table 1 compares the parties' initial positions on revenue requirement increases for 2007 with the Settlement. The parties' compromise reduces the rate impact in 2007 by more than two-thirds and retains small increases in the two following years. These figures do not include revenue adjustments attributable to Advice Letter 363-A, effective February 16, 2006 (a rate base offset for advice letter projects completed in 2005), and Advice Letter 366A, effective July 3, 2006 (a rate offset for the increased Purchase Water and Pump Tax expenses charged by the Santa Clara Valley Water District).

Table 1
Revenue Requirement Increases for 2007-2009
(\$ thousands)

Year	Utility requested increase above current rates		DRA recommended increase above current rates		Settlement increase above current rates	
	\$	%	\$	%	\$	%
2007	\$14,446.0	8.54%	\$ 1,481.0	0.86%	\$ 4,001.0	2.33%
2008	\$ 5,196.0	2.78%	escalation	-	\$ 5,359.0	3.04%
2009	\$ 6,246.0	3.26%	escalation	-	\$ 4,985.0	2.75%

Adjustments for the two advice letter filings yield the following net increase in revenues: \$3,488,000 or 2.00% in 2007; \$5,402,000 or 3.02% in 2008; and \$3,959,000 or 2.15% in 2009. A residential customer with a ¾" meter who uses approximately 1,500 cubic feet (CF) of water will see a bill increase of about 4.31% or \$1.90 9 in 2007 (from \$44.11 to \$46.01 over a two-month period). Bills for business accounts will increase by no more than 3.43% in 2007.

5.2 Return on Equity

The parties' have been able to resolve their differences about the appropriate return on common equity and propose that we authorize 10.13% for each year through 2009 (less than SJWC's request for 11.20% but more than DRA's proposal for 9.65%). (Settlement, Section 14.0 et seq.) The Joint Response states:

... the agreed upon return on common equity of 10.13% is within the range of rates of return currently authorized by the Commission for water utilities. This competitive ROE will allow SJWC a fair opportunity to raise funds at a favorable cost, promoting SJWC's short and long term viability. (Joint Response, p. 2.)

5.3 Total Water Production Cost Balancing Account; Water Quality Memorandum Account

DRA represents that SJWC's water quality is satisfactory and that the utility is in compliance with all current water quality standards. SJWC has abandoned its request that we establish, now, a full cost balancing account for water production. Instead the parties recommend resolution of various outstanding matters. (Settlement, Section 12.0 et seq.) Their recommendations include an advice letter filing to request a Water Quality Expenses memorandum account for future compliance with new state and federal standards (up to \$500,000). They also agree upon recovery of incurred expenses for storm damage repairs (\$57,860 in the Catastrophic Events Memorandum Account), for cost associated with the Water Contamination Litigation Memorandum Account (\$8,330), and for under collection of SJWC's incremental cost balancing account (\$57,860). The Joint Response states that by these measures and the parties' agreement that SJWC should pursue certain capital improvement projects, discussed below, the Settlement "promotes water quality." (*Ibid.*)

5.4 Capital Improvements

The parties' Settlement includes agreed-upon adjustments to plant additions already approved for 2006 based upon cost updates, recommendations for plant additions in 2007 and 2008, and identification of other capital projects for which advice letter approval should be sought once the costs have been identified more clearly. (Settlement, Section 8.0 et seq.) For example, the rate base adjustments for 2006 run the gamut from installation of two new wells (at more than a million dollars each) to installation of four new fire hydrants (costing just over \$10,000 each) and from tank coating (approximately half a million dollars) to new personal computers, including laptops for field use

(\$150,000). The parties agree that SJWC will combine its requests for utility plant recovery in order to limit advice letter filings in 2007, 2008 and 2009 to no more than two per year.

The parties' recommendations yield capital improvement budgets of \$38 million in 2007, \$39 million in 2008, and \$41 million in 2009, which recognize system replacements and improvements identified in SJWC's four infrastructure planning studies:

- Infrastructure Study Phase I - Pipelines 5-year Update (2003)
- Infrastructure Study Phase II - Pipelines (2004)
- Infrastructure Study Phases III & IV - Other System Components (2002)
- Well and Groundwater Study (Aug. 2005)

The Joint Response states, "These projects will serve to maintain the infrastructure to provide reliable service to the ratepayers." (Joint Response, p. 5.)

5.5 Water Supply

The table below summarizes the Settlement's supply mix recommendation, which approximates SJWC's initial proposal.³ According to both SJWC and DRA, the purchased water quantity represents SJWC's minimum

³ In the Procedural History portion of today's decision we note the filing of Great Oaks Water Company's motion to intervene and the ALJ's denial of that motion. The motion was based partly on Great Oaks' opposition to DRA's proposal that SJWC reduce groundwater pumping and increase water purchases from the Santa Clara Valley Water District. While the intervention was denied on jurisdictional grounds, the ALJ's ruling observed that from a practical standpoint the Settlement tended to moot Great Oaks' stated concern, since the Settlement does not endorse DRA's initial supply mix proposal but instead closely follows historical takes.

take requirement under its long-term take-or-pay contract with Santa Clara Valley Water District.

Table 2
Water Supply Sources

	Pumped Water (Kccf)	Purchased Water (Kccf)	Surface Water (Kccf)
SJWC Historical Average Use (2000 - 2005)	37,000	24,000	5,500
SJWC Proposed Supply Mix	30,000	30,000	5,300
DRA Proposed Supply Mix	22,000	37,000	6,100
Settlement - Supply Mix	29,000	30,000	6,100

5.6 Conservation

SJWC's Urban Water Management Plan (Exhibit 5) sets forth the utility's proposed water conservation program. Components of the program include the following: distribution of low-flow shower heads and faucet aerators; a water audit program; a leak detection program; written water conservation tips and general conservation information; low-flush toilet rebate program; residential washing machine rebate program; annual bill inserts promoting the water audit program and methods for reducing water consumption, and encouraging irrigation reductions during the fall and winter; an annual water awareness day; and membership in the California Urban Water Conservation Council.

The Joint Response also notes two other conservation-related factors. SJWC's unaccounted for water rate estimate, which the Settlement quantifies at 6.4% (based on the most recent five-year average), is below the Water Action

Plan's goal of 7%. (Settlement, Section 2.1.) In addition, SJWC has a successful recycled water program with 39 customers, including high volume golf courses and cemeteries.

5.7 Impacts on Low-Income Ratepayers

The Joint Response notes that SJWC has a functioning low-income program that provides a 15% discount on the total water bill for eligible customers. The program uses the same income qualifications as Pacific Gas and Electric Company's CARE program, which serves the same customer base and also is available to mobile home customers who receive water through a master-meter distribution system. SJWC promotes the low income program in three languages, English, Spanish and Vietnamese.

5.8 Exhibits

The parties' Settlement asks the Commission to identify and move into evidence the prepared testimony and other documentary evidence which they have developed. (Settlement, Section 15.6.) Attachment C to today's decision is the exhibit list for the GRC. It identifies all prepared testimony & other documentary evidence offered by the parties, with the exception of the workpapers and master data request responses, and provides for the receipt in evidence of the identified documents concurrently with the adoption of today's decision.

The ALJ notified the parties that she considered the workpapers and master data request responses to be duplicative of other documentary evidence and that for this reason and given their volume, she would not receive these documents in evidence in their entirety. Subsequently, neither party has sought the admission of any portion of the workpapers or master data request responses.

5.9 Conclusion

On balance, we find that the Settlement is comprehensive, meets the requirements of the Assigned Commissioner's scoping memo, and is fair to both ratepayers and the utility. The parties' represent that the Settlement is consistent with existing law and we are aware of no conflict. Nor, as far as we are aware, does the Settlement create any impediment to the discharge of our future regulatory obligations. Water Division has reviewed the Settlement, together with the parties' draft calculations supporting the tariff changes proposed, and has made only a few, relatively minor corrections to the following attachments:

- Adopted Summary of Earnings, Attachment D, reflects chemicals and franchise fees, which had been omitted;
- Adopted Quantities, Attachment E, page 2 of 2 - the year "2007" replaces an incorrect reference to the year "2004";
- Adopted Rates, Attachment F - the reference "(continued)" has been added to the end of pages 1-3 and "End of Attachment F" has been added to the end of page 4; and
- A cover sheet that reads "Attachment H - Revised Tariff Schedules for 2007" has been added to this attachment.

With these minor corrections, we conclude that the Settlement is in the public interest and should be adopted. Likewise, the documentary evidence listed in Attachment C should be received as the evidence of this case.

6. Public Participation Notice

We did not hold a public participation hearing (PPH) given the cost of providing special notice, the very low customer attendance at the last PPH, and the limited number of customer communications received about this GRC application as of the date of the PHC. The need for special notice is attributable to a timing mismatch. Because SJWC bills on a two-month cycle, the rate case plan and Rule 3.2(d) of the Commission's Rules of Practice and Procedure

require SJWC to provide customers with notice that it has filed an application for a rate increase within 75 days of that filing. SJWC, like other utilities, typically includes such customer notice as an insert in the regular bill. In order to complete the public notification process on day 75, SJWC must begin it by day 15. However, discussions about when, where and whether to hold a PPH typically occur at the PHC, which generally is held after the 30-day protest period expires and which, under the rate case plan, may be held as late as day 75.

The scoping memo directed SJWC to develop a proposal that would avoid the need for special notice in the future, should the Commission determine that a PPH should be held. That proposal (Exhibit 10) explains the problem very clearly and updates the estimate of the cost of special notice (approximately \$100,000). Exhibit 10 suggests, as a solution, early assignment of the Assigned Commissioner and Presiding ALJ (at day -60, when the application is first tendered to staff for a preliminary assessment of whether it is complete.) We do not think this very workable. The date is too early to permit efficient assignment of an ALJ. Furthermore, at that early date we would have no basis to assess the usefulness of a PPH and would be reluctant to commit to hold one. It may be preferable to convene a PPH later in the rate case plan, perhaps concurrently with evidentiary hearings, so that the second billing cycle can be used to provide bill insert notice at no additional cost. However, since SJWC is not the only utility that faces this problem, we will refer the generic problem to the review of the rate case plan which we intend to commence early in the new year.

7. Water Action Plan

On December 15, 2005, the Commission adopted a Water Action Plan. It is a principle-based, long-term strategic plan for guiding the Commission in its regulatory oversight of investor-owned water utilities. SJWC's application was

prepared in advance of the Water Action Plan, thus it does not reflect all the objectives of the Plan. Accordingly, SJWC should file an application within 120 days of the effective date of today's decision to propose how it plans to implement the Water Action Plan.

8. Change in Preliminary Determinations; Comments on Proposed Decision

The scoping memo confirmed the preliminary determinations made in Resolution ALJ 176-3168 (i.e. ratesetting proceeding; hearings). However, the parties settled before hearings commenced and the ALJ determined there was no need to hold hearings on the Settlement. Therefore, we change the preliminary determination that hearings are necessary and find that no hearings are necessary. Accordingly, § 311(g)(3), which does not require a comment period for uncontested matters that pertain solely to water corporations, applies to the proposed decision. However, at the request of the ALJ, the proposed decision was served on the parties in order to permit comment and ensure the accuracy of the draft. No comments were filed.

9. Assignment of Proceeding

John Bohn is the Assigned Commissioner in this proceeding and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. The Settlement negotiated by SJWC and DRA resolves all issues between them in this proceeding .
2. SJWC and DRA are fairly reflective of the affected interests in this proceeding.
3. No term of the proposed Settlement contravenes statutory provisions or prior Commission decisions.

4. The Settlement (and all of its attachments, including in particular, the Joint Comparison Exhibit which is Attachment B to today's decision), together with the parties' Joint Response filed October 13, 2006, convey sufficient information to permit the Commission to discharge its future regulatory obligations with respect to the parties and their interests.

5. The proposed Settlement is unopposed.

6. The summaries of earnings presented in Attachment D, and the quantities and calculations presented in Attachments E, F and G, all based on the Settlement, are reasonable, justified, and sufficient for ratemaking purposes.

7. The documentary evidence material to this GRC is identified in Attachment C.

8. The Commission adopted a Water Action Plan on December 15, 2005, which contained various objectives expected to be implemented by investor-owned water utilities.

Conclusions of Law

1. The uncontested Settlement is reasonable in consideration of the whole record, consistent with law, and in the public interest; it satisfies the requirements of Rule 12.1(d).

2. The Settlement should be adopted.

3. The revised rates, and tariff rule revisions set forth in Attachments F and H, based on the parties' Settlement, are justified.

4. The preliminary determinations should be changed to state that no hearing is necessary.

5. The documentary evidence listed in Attachment C should be received in evidence.

6. This decision should be made effective immediately to enable SJWC to implement the Settlement without delay.

ORDER

IT IS ORDERED that:

1. The Joint Motion to Adopt Settlement, filed on August 28, 2006, is granted and the Settlement is approved. The ratemaking calculations and the tariff revisions, all in Attachments D through H, are approved.

2. The issue of how a utility which has a two-month billing cycle may provide cost effective notice of a public participation hearing is deferred to our forthcoming review of the rate case plan for water utilities.

3. The preliminary determinations are changed to reflect that no hearing is necessary.

4. The documentary evidence listed in Attachment C is received in evidence.

5. San Jose Water Company shall file an application with the Commission within 120 days of the effective date of this decision to request approval for its proposal to implement the Water Action Plan objectives.

6. Application 06-02-014 is closed.

This order is effective today.

Dated November 9, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG

Commissioners

