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WATER/RSK/FLC/JB5/TS2/jlj Agenda Item #8348

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS RESOLUTION NO. W-4751
Water and Sewer Advisory Branch March 26, 2009

R E S O L U T I O N

(RES. W-4751), THIS RESOLUTION DENIES GOLDEN STATE WATER COMPANY'S (GSWC), ADVICE LETTERS (ALS) 1316-W AND 1317-W TO RECOVER $1,041,462 IN THE REGION II SERVICE AREA AND TO RECOVER $943,562 IN THE REGION III SERVICE AREA, RESPECTIVELY, FOR ITS EXPENSES IN THE WATER CONSERVATION MEMORANDUM ACCOUNT (WCMA) AND REJECTS THE TARIFF SCHEDULES ATTACHED TO ALS 1316-W AND 1317-W.

SUMMARY

By Advice Letter No. 1316-W, filed on January 15, 2009, GSWC requests a surcharge for 12 months of $0.0356 per hundred cubic feet (Ccf) to be added to each customer's bill in Region II for Schedules ME-1-R, Residential Metered Service, and ME-1-NR, Non-Residential Metered Service. Similarly, by AL 1317-W, filed on January 15, 2009, GSWC requests a surcharge for 12 months of $0.0298 per Ccf to be added to each customer's bill in Region III for Schedules R3-1-R, Residential Metered Service; R3-1-NR, Non-Residential Metered Service; R3-CM-7ML, Limited Metered Service; R3-CMH-3M, R3-CMP-3M, and R3-OC-3M, Metered Irrigation Service; and R3-SD-3, Measured Irrigation Service. The increases requested are to recover lost revenues tracked in its Water Conservation Memorandum Account (WCMA) from conservation efforts by GSWC's customers during the period of August 14, 2008 through November 14, 2008.

This Resolution denies GSWC's AL 1316-W and 1317-W without prejudice. GSWC may seek recovery of amounts recorded in its WCMA in its next general rate case filing.

BACKGROUND

GSWC, a California corporation, is a Class A utility and a subsidiary of American States Water Company. As one of California's largest Commission-regulated water utilities, it serves approximately 240,000 customers in districts throughout the state. The Region II service territories include: Artesia, Bell, Bell Gardens, Carson, Cerritos, Compton,

Cudahy, Culver City, Downey, El Segundo, Gardena, Hawaiian Gardens, Hawthorne, Huntington Park, Inglewood, Lakewood, La Mirada, Lawndale, Long Beach, Norwalk, Paramount, Santa Fe Springs, South Gate, and the communities of Athens, Lennox, Willowbrook, Moneta, Florence-Graham, Del Aire, and other unincorporated areas in Los Angeles County. The Region III service territories include: Barstow, Calipatria, Claremont, Orange County, San Dimas, and San Gabriel. GSWC requests authority under General Order 96-B, Rule 7.6.2 and Water Industry Rule 7.3.3(7) and Section 454 of the Public Utilities Code to recover $1,041,462 for Region II and $943,562 for Region III or 0.94% and 0.96%, respectively, of gross annual revenues from its WCMA through a surcharge applied over 12 months. The surcharge is intended to recover lost revenues from customer conservation efforts for the period of August 14, 2008 through November 14, 2008. GSWC's present rates for Region II became effective on January 1, 2009, per AL 1311-W which authorized a Balancing Account Offset increase for purchased electricity, purchased water, and pump taxes. GSWC's present rates for Region III became effective on January 1, 2009, per AL 1312-W which authorized a Balancing Account Offset increase for purchased electricity, purchased water, and pump taxes.

On February 4, 2009, DRA filed a protest to AL 1316-W and 1317-W. The protest asserts these advice letters should be rejected on the following grounds: 1)The WCMA was not established in accordance with General Order 96B (GO96B) and is not a valid account since the Division of Water and Audits (DWA) did not prepare a disposition to resolve AL 1284-W authorizing the WCMA; 2) If the Commission determines the account is valid, the expenses GSWC has tracked in the WCMA are not valid for the following reasons: i) The conditions that warrant GSWC's use of this type of a memorandum account never materialized, since GSWC has not implemented mandatory rationing measures in response to the drought conditions. ii) A Memorandum account is not an appropriate account to track "lost revenues." 3) If the Commission determines that GSWC's WCMA is a valid account, DRA should be allowed to conduct an audit of the expenses GSWC has booked to the account prior to recovery by GSWC.

On February 11, 2009, GSWC responded to each point of DRA's protest. GSWC responded to the allegation that the WCMA is not a valid account by stating that DWA did not suspend AL 1284-W, therefore pursuant to Section 7.6.1 of GO96-B, it became effective 30 days after filing, which is August 18, 2008. Further, the California Appellate Court ruled that a request for a memorandum account was to be processed under PU Code Section 455 and, if not suspended, would become effective on regular statutory notice. 85 Cal.App.4th 1086; 102 Cal.Rptr.2d 684 [Dec. 2000]. DRA also alleges that because GSWC has not implemented a mandatory rationing program, GSWC is not entitled to recovery of lost revenues and references D.90-08-055 and D.91-10-042. GSWC responds

that the Commission historically has not required the implementation of mandatory rationing in order to recover lost revenues due to conservation. In D.90-07-067, the Commission authorized all water companies to establish memorandum accounts to track expenses and revenue losses caused both by mandatory rationing and by voluntary conservation programs.[1]

In D.92-09-084, Ordering Paragraph 9 reads:

> "9. Decision (D.) 90-08-055 and D.91-10-042 are modified to permit a utility to open or maintain its voluntary conservation memorandum account following termination of mandatory rationing in order to track lost sales attributable to residual conservation, until next general rate case."

In response to DRA's allegation that the WCMA should not track "lost revenues," GSWC has noted that the Commission has identified a memorandum account as the appropriate account to track "lost revenues" as a result of conservation and has provided guidelines on how to calculate the lost revenues. GSWC responded to the allegation that DRA should be allowed to conduct an audit of the WCMA by stating that DRA was served a copy of the GSWC's ALs 1316-W and 1317-W at the same time DWA was served, and DRA has had ample time to review and audit GSWC's response. In fact, DRA became aware of GSWC's memo account long before GSWC requested recovery and started contacting GSWC with informal data requests (verbal) as early as December 2008, inquiring as to the calculations of the lost revenues being recorded in the WRAM. GSWC claims that if DRA has not thoroughly reviewed ALs 1316-W and 1317-W, it is because DRA has chosen not to and GSWC should not be punished for DRA's action or inactions.

NOTICE AND PROTESTS

GSWC gave public notice of the rate increase request for the entire Regions II and III service areas. The publications indicate the proposed increases to the applicable rate schedules. The service list was provided to staff and thirty-five letters in opposition were received with many stating that the increase request was unreasonable and unjust. Several letters voiced their concerns of a rate increase conducted simultaneously with GSWC's existing general rate case proceeding, Application 08-07-011, and alluded to their current hardships and tough economic times. A few also claimed that they did not understand why they should be "punished" with a surcharge when they have been

[1] Finding of Fact 3 D. 90-07-067

conserving water in response to the drought, while a few others disagreed with GSWC's authorized rate of return being "guaranteed" through these rate increases.

DISCUSSION

On February 13, 2009, DWA suspended ALs 1316-W and 1317-W on the grounds that the advice letters required a resolution to allow the Commission to look into the facts and render a fully informed decision, thereby avoiding any future complications.

Through AL 1284-W, GSWC requested and received authorization to establish a WCMA to track the extraordinary expenses and revenue shortfall associated with the conservations measures in conjunction with the declared drought in California. AL 1284-W was filed as a Tier 2 advice letter on July 18, 2008 and became effective August 18, 2008. AL 1284-W states in the Memorandum Account Justification section: "GSWC will request recovery of amounts recorded in the WCMA in its next general rate case proceeding, or another regulatory proceeding as directed by the Commission." (at p.3) DRA protested both ALs 1316-W and 1317-W indicating that Tier 3 advice letters are not the appropriate procedural vehicle that will allow DRA an opportunity to audit the WCMA before recorded amounts go into rates. AL 1316-W and 1317-W should be rejected because: 1) GSWC has not followed its own procedural guidance in seeking recovery through a general rate case and 2) DRA's protest calling for an audit of these accounts is better resolved as part of a general rate case proceeding.

GSWC has cited D.92-09-084 in reinforcing the fact that a water utility should be permitted to recover a water conservation account in a utility's subsequent general rate case proceeding. D.90-08-055 has also been cited as the last Commission proceeding dealing with drought conditions and water utilities' compliance efforts through water conservation programs. California Water Service Company has requested similar recovery in their general rate case proceeding following the drought, D.93-04-026, where the utility was found to be in compliance by the DWA with the previous Commission decision requiring conservation efforts, including development of a long-range water management program.

Thus, the obvious conclusion is that GSWC should request recovery of amounts recorded in the Water Conservation Memorandum Account in GSWC's next general rate case proceeding.

COMPLIANCE

GSWC has no outstanding compliance orders. There are no Commission orders requiring system improvements. The utility has been filing annual reports as required.

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. Comments were received on _____; replies were received on _____.

FINDINGS

1. Golden State Water Company filed Advice Letter 1316-W on January 15, 2009 for its Region II and Advice Letter 1317-W for its Region III.

2. Advice Letter 1284-W that sought and received authorization to create a Water Conservation Memorandum Account stated it would request recovery of amounts recorded in the Water Conservation Memorandum Account in Golden State Water Company's next general rate case proceeding.

3. On February 4, 2009, Division of Ratepayer Advocates filed a protest to Advice Letters 1316-W and 1317-W. Among the concerns raised in its protest, DRA indicated it should be allowed to conduct an audit of the amounts recorded in the Water Conservation Memorandum Account.

4. The following tariff schedules attached to Advice Letters 1316-W and 1317-W should be rejected: For Region II: 1) Schedules ME-1-R, Residential Metered Service, and 2) ME-1-NR, Non-Residential Metered Service. For Region III: 1) Schedules R3-1-R, Residential Metered Service; 2) R3-1-NR, Non-Residential Metered Service; 3) R3-CM-7ML, Limited Metered Service; 4) R3-CMH-3M, R3-CMP-3M, and R3-OC-3M, Metered Irrigation Service; and 5) R3-SD-3, Measured Irrigation Service

THEREFORE IT IS ORDERED THAT:

1. Golden State Water Company's Advice Letters 1316-W & 1317-W are denied without prejudice.

2. Golden State Water Company may seek recovery of amounts recorded in its Water Conservation Memorandum Account in its next general rate case filing.

3. Golden State Water Company is directed to maintain the Water Conservation Memorandum Account as required by Public Utilities Code Section 792.5.

4. The following tariff schedules attached to Advice Letters 1316-W and 1317-W are rejected: For Region II: 1) Schedules ME-1-R, Residential Metered Service, and 2) ME-1-NR, Non-Residential Metered Service. For Region III: 1) Schedules R3-1-R, Residential Metered Service; 2) R3-1-NR, Non-Residential Metered Service; 3) R3-CM-7ML, Limited Metered Service; 4) R3-CMH-3M, R3-CMP-3M, and R3-OC-3M, Metered Irrigation Service; and 5) R3-SD-3, Measured Irrigation Service.

5. 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 March 26, 2009; the following Commissioners voting favorably thereon:

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PAUL CLANON
Executive Director