

Decision PROPOSED DECISION OF ALJ McKENZIE (Mailed 11/14/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Golden State Water Company (U 133 W) for an order authorizing it to increase rates for water service by \$14,926,200 or 15.77% in 2007; by \$4,746,000 or 4.31% in 2008; and by \$6,909,300 or 6.02% in 2009 in its Region II Service Area.

Application 06-02-023
(Filed February 24, 2006)

OPINION GRANTING INTERIM RATE RELIEF

Summary

Pursuant to Pub. Util. Code § 455.2, this decision grants Golden State Water Company (GSWC) interim rate relief with respect to its Region II and general office operations, effective January 1, 2007. The interim rate increase is based upon the rate of inflation as compared to existing rates for GSWC's Region II (including its current allocations of general office expenses). The interim increase will be subject to refund and may be adjusted upward or downward, back to January 1, 2007, consistently with the final rates adopted by the Commission in the pending general rate cases.¹

We find it is in the public interest to grant interim rate relief to GSWC. While GSWC is responsible for some of the delay in the procedural schedule, the

¹ The rate of inflation is to be calculated using the most recent Consumer Price Index (CPI) information maintained by the U.S. Department of Labor. For the period ending October 31, 2006, for example, the CPI was 1.3 % higher than at the end of October 2005. The link to the CPI data is www.bls.gov/cpi/.

Commission's processes have also contributed, and so we conclude that GSWC's actions do not warrant a denial of interim rate relief.

GSWC's Request for Interim Rate Relief

GSWC filed the general rate cases (GRCs) for its Region II and general office operations on February 14, 2006. In the fifth clause of its prayer for relief, GSWC requested that it be granted interim rates "as determined reasonable by the Commission if completion according to the Commission's Regulatory Plan Time Table is delayed or if step and attrition increases are delayed due to no fault of GSWC." (Application, p. 24.) GSWC repeated the request for interim rate relief in the conclusion of its August 10, 2006 opening brief, and of its August 29, 2006 reply brief.

Discussion

GSWC is a Class A water utility; i.e., it has greater than 10,000 service connections. Pub. Util. Code § 455.2, enacted in 2002, permits a Class A water utility to request an inflation-indexed interim rate increase in the event the water utility's general rate case (GRC) is not completed by the first day of the test year of the application.

GSWC's GRC applications for its Region II and general office were made pursuant to the new three-year GRC cycle requirements for Class A utilities set forth in the rate case plan (RCP) adopted in Decision (D.) 04-06-018. Under these rules, GSWC (which was formerly known as Southern California Water Company) was supposed to file the GRC for its Region II on January 5, 2006. (D.04-06-018, Appendix A, *mimeo.* at pp. 1 & 18.) With respect to the GRC for GSWC's general office, D.04-06-018 had originally directed that it be filed in February 2005. However, pursuant to a stipulation between the company and the Division of Ratepayer Advocates (DRA) that was approved in D.06-01-025,

the Commission directed GSWC to file the GRC for its general office along with its Region II GRC. (D.06-01-025, *mimeo.* at 87, Ordering Paragraph 4.)

D.04-06-018 generally sets forth the following criteria for interim rate relief pursuant to Pub. Util. Code § 455.2:

1. The utility must demonstrate that it has made a substantial showing in its application that supports a rate increase at least equal to the rate of inflation.
2. The presiding officer's decision must address whether the delay in completing the GRC proceeding is "due to actions by the water corporation." If so, the decision should specify the utility actions that caused the delay. The presiding officer's decision should also include a proposed effective date for interim or final rates.
3. The Commission must determine whether interim rate relief is in the public interest. (*See, D.04-06-018, mimeo.* at 21-24.)

We discuss each of these criteria in turn.

GSWC's Showing in Support of a Rate Increase Equal to or Greater than the Rate of Inflation

As to the first criterion, the Region II portion of the application filed in February 2006 made showings in support of rate increases for each year (2007-2009) that are in excess of the 1.3 % CPI inflation rate for the 12-month period ending October 31, 2006. As the caption to this decision indicates, GSWC sought an increase of 15.77% in 2007, 4.31% in 2008, and 6.02% in 2009. GSWC's showing was supported by extensive testimony as well as workpapers.

The great majority of contested issues for Region II were settled in a stipulation filed by GSWC and DRA on August 4, 2006. However, it is evident from the summary-of-earnings table in Appendix A to the stipulation that when the amounts the parties have agreed upon are taken into account, the rates for 2007 requested by GSWC also exceed the applicable inflation rate. Using the stipulated amounts and GSWC's recommendations for the remaining, contested

items, the operating revenues produced by the company's proposed rates for Region II would produce an increase of 5.56% in 2007.

As for the general office GRC – where GSWC's showing was also supported by extensive testimony and workpapers -- the parties remain far apart. When the parties' "final" figures (as shown on page 6 of Appendix A to the August 4, 2006 stipulation) are taken into account, GSWC is seeking a 31.1% increase over the currently authorized general office expenses for the three categories that comprise most of these expenses: pensions and benefits, outside services, and Administrative and General (A&G) Labor.

GSWC Has Not Caused Delay Sufficient to Justify the Denial of Interim Rate Relief

As noted above, the second factor we are required to consider under D.04-06-018 is whether the delay in processing the water GRC is "due to actions by the water corporation." If the Commission concludes that it is, then the Commission or presiding officer may set a different effective date for the interim or final rates than the date specified in § 455.2.

For the reasons set forth below, we conclude that while some of the delay in processing this application has been due to delays by GSWC (as well as by DRA), an equal or greater amount of the delay has been due to slower-than-anticipated decision writing attributable to a death in the family of the assigned Administrative Law Judge (ALJ).

As noted above, under the RCP set forth in D.04-06-018, GSWC was supposed to file the instant application on January 5, 2006. The actual filing took place about five weeks later, on February 14, 2006. After that time, however, GSWC and DRA worked reasonably expeditiously to keep the case on track. Although the May 2, 2006 prehearing conference (PHC) was held relatively late (due to the scheduling constraints for both GSWC and DRA), both parties

proposed similar schedules that were consistent with the RCP and called for a Commission decision by the end of 2006.

The assigned ALJ made some minor adjustments to the proposed hearing schedule, and the parties did a good job in adhering to it. DRA filed its reports and testimony on May 25, 2006, and GSWC filed timely rebuttal testimony on June 9, 2006. Settlement negotiations commenced in mid-June, and hearings began as scheduled on June 26, 2006. While the hearings ended up consuming eight days rather than five, this was due in significant part to DRA's motion to strike portions of GSWC's rebuttal testimony.²

Similarly, although the parties' briefs were filed later than originally proposed, the delays were due to short requests for extensions of time by both GSWC and DRA. While the ALJ originally set August 7 as the due date for opening briefs, the briefs were filed on August 10. The reply briefs were originally due on August 21, but were filed on August 29, 2006.

After the briefs were submitted, the parties and the ALJ agreed that a "true-up" hearing should be held on September 11 and 12, 2006, to allow the ALJ to ask any questions he might have about the August 4 stipulation. The true-uphearing was canceled, however, after the assigned ALJ's mother died on September 9, 2006. Owing to this death and another matter requiring urgent attention, the ALJ was unable to resume work on this proceeding until the end of October.

As we recently observed in D.05-12-024, the RCP in D.04-06-018 requires the parties in Class A water company GRCs to adhere to an ambitious,

² The history of and issues presented by DRA's motion to strike are set forth in the ALJ's Ruling Denying Motion of DRA to Strike Rebuttal Testimony, issued July 12, 2006.

expedited schedule. (*Mimeo.* at 6.) Both GSWC and DRA attempted to do that in this case, and their departures from the model schedule contained in D.04-06-018 were driven in significant part by the complexities of having to process two GRCs at once. In addition, the already-tight schedule was disrupted by the death in the ALJ's family. Under these circumstances, we cannot conclude that the delay in processing this GRC, which delay precludes new rates from becoming effective on January 1, 2007, is "due to actions by the water corporation."

The Implementation of Interim Rates Is in the Public Interest

As noted above, the third determination we must make before authorizing interim rates pursuant to § 455.2 is that it is in the public interest to do so. In this case, that finding follows rather straight-forwardly from our previous determinations that (1) GSWC is seeking rate increases for both its Region II and general office operations that exceed the 12-month average increase in the CPI, and (2) the Commission's inability to put final rates into effect by January 1, 2007 is not "due to actions by the water corporation." As we stated in D.05-12-024, the delays here "should not result in either the utility foregoing revenue necessary for just and reasonable rates or the ratepayers paying less (or more) than reasonable rates." (*Mimeo.* at 7.)

GSWC Should Continue to Use the Same Formula for Allocating General Office Expenses to Region III That Was Assumed in Application (A.) 05-02-004

Because this proceeding involves two GRCs, one issue remains before interim rates can be put into effect. That issue is the formula that should be used by GSWC to allocate general office expenses to its Region III, the most recent GRC for which was A.05-02-004.

In approving an interim rate increase of 1.3 % for Region II in today's decision, we recognize that we are also deferring a decision on one of the most contentious issues in this proceeding; *viz.*, how much of GSWC's general office expenses should be allocated to its non-regulated affiliates, including American States Utility Services, Inc. (ASUS). In D.04-03-039, the Commission ordered GSWC to conduct a cost allocation study on this subject and to present the results in the next general office GRC. (D.04-03-039, *mimeo.* at 27-28.)

GSWC and DRA remain far apart on the proper cost allocation, as the following excerpt from GSWC's opening brief demonstrates:

"[T]he results of GSWC's cost allocation study indicate that for this rate case cycle, about 94.45 percent of the General Office costs are allocated to GSWC, with the remaining 5.55 percent of General Office costs allocated to GSWC's non-regulated affiliates, ASUS and CCWC . . . [T]his allocation only represents the total allocation of indirect and overhead costs that are assigned to ASUS and CCWC from General Office operations. In addition to these allocated costs, ASUS and CCWC incur direct costs that are charged directly to them by GSWC in the first instance . . .

"In contrast to GSWC's strict adherence to the Commission's guidelines, DRA ignored the Commission's instructions to allocate costs based on direct causation and randomly added or subtracted factors from the four-factor allocation methodology . . . This random methodology resulted in DRA's recommendation that **21.86%** of the General Office expenses be allocated to GSWC's non-regulated affiliates. DRA's recommendation has no relationship to a reasonable estimate of the relative obligations or burdens imposed on GSWC's resources by ASUS." (GSWC Opening Brief, p. 13; emphasis in original.)

For further discussion of this contentious issue, *see*, DRA Opening Brief, pp. 8-17; GSWC Reply Brief, pp. 1-9; DRA Reply Brief, pp. 9-18.

In D.06-01-025, our opinion resolving A.05-02-004, we approved a stipulation between GSWC and DRA governing general office expenses. The stipulation is set forth as Appendix B to D.06-01-025. The stipulation provided that general office net operating expenses for 2006 would be deemed to be \$29,534,998, that the general office weighted average rate base for 2006 would be deemed to be \$13,260,346, and that pending completion of the allocation study required by the Commission, 31.70% of these amounts would be allocated to Region III for 2006. The parties also agreed that "Region III rates for Escalation Years 2007 and 2008 will include that amount of the General Office revenue requirement that in the January 2006 GRC proceeding [for Region II,] the Commission finds allocable to Region III rates for those Escalation Years."

We think the most reasonable way of carrying out the intent reflected in this stipulation is to order a 1.3 % increase to be applied to the general office net operating expenses and the general office weighted average rate base amounts provided for in the stipulation, and then to allocate 31.70% of these escalated amounts to Region III ratepayers. When a final decision is issued in this proceeding, Region III rates for 2007 will be adjusted either upward or downward to reflect the decision's determinations on the proper allocation formula for general office issues.

Comments on Proposed Decision

The proposed decision (PD) of the ALJ in this matter was mailed to the parties in accordance with § 311 of the Pub. Util. Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments on the PD were filed by GSWC on December 4, 2006. In its comments, GSWC asks the Commission to make clear that the written notice to customers required by Ordering Paragraphs (OPs) 2 and 4 may be made by bill insert, owing to the high cost of a separate

mailing. This is a reasonable request, and language reflecting the change has been added to OPs 2 and 4.

The decision has also been updated to reflect the fact that while the CPI was 2.1% higher than a year earlier when the PD was mailed, the CPI on the issuance date of this decision is only 1.3% higher than a year earlier.

Assignment of Proceeding

John A. Bohn is the assigned Commissioner and A. Kirk McKenzie is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. GSWC submitted its GRC applications for Region II and general office operations on February 14, 2006. Under the RCP schedule adopted in D.04-06-018, the applications were due on January 5, 2006.

2. The primary causes of delay in this proceeding have been (a) short extensions of time requested by both GSWC and DRA, and (b) a death in the assigned ALJ's family.

3. The delays caused by GSWC in this proceeding do not justify a delay in interim rate relief.

4. Based on progress to date in this proceeding, a final decision is unlikely until sometime in the first quarter of 2007.

Conclusions of Law

1. GSWC is eligible to seek interim rate relief under Pub. Util. Code § 455.2 for its GRC applications for its Region II and general office operations.

2. GSWC has made a detailed showing in its applications for a rate increase for Region II that is at least equal to the rate of inflation for the 12-month period ending October 31, 2006.

3. The most reasonable way to carry out the intent of the parties to the stipulation concerning general office expenses set forth in Appendix B to

D.06-01-025 is (a) to increase the amounts assumed for general office net operating expenses and general office weighted average rate base for 2006 in this stipulation by 1.3 %, and then (b) allocate 31.70% of these increases to Region III ratepayers as their proportionate share of the interim GRC rate increase attributable to general office operations.

4. It is in the public interest to grant GSWC interim rate relief as set forth above effective January 1, 2007.

5. This proceeding should remain open for resolution of the pending application.

INTERIM ORDER

IT IS ORDERED that:

1. Golden State Water Company (GSWC) shall file via advice letter within five days, a tariff implementing interim rates in its Region II. The interim increase shall be in the amount of 1.3 %, which represents the 12-month percentage change in the U.S. Department of Labor's Consumer Price Index for all urban consumers. This interim rate increase shall be subject to refund, and shall be adjusted upward or downward, back to the effective date, consistently with the final rates adopted by the Commission in this proceeding.

2. Upon tariff approval, GSWC shall notify its Region II customers in writing of the interim rate increase. The notice (which may be given by means of a bill insert) shall reference this interim decision and shall explicitly state that the interim rate increases are subject to refund and will be adjusted upward or downward back to the effective date of the interim rates, consistently with the final rates adopted by the Commission.

3. GSWC shall file via advice letter within five days, a tariff implementing interim rates for its general office expenses in its Region III. This interim rate

increase shall be calculated by (a) increasing the amounts assumed in the stipulation attached as Appendix B to Decision 06-01-025 for 2006 general office net operating expenses and the 2006 general office weighted average rate base in this stipulation by 1.3 %, and then (b) allocating 31.70% of these increased amounts to Region III ratepayers as their proportionate share of the interim GRC rate increase attributable to general office operations in Region III. This interim rate increase for Region III shall be subject to refund, and shall be adjusted upward or downward, back to the effective date, consistently with the final rates adopted by the Commission in this proceeding.

4. Upon tariff approval, GSWC shall notify its Region III customers in writing of the interim rate increase reflecting their proportionate share of increased general office expenses. The notice (which may be given by means of a bill insert) shall reference this interim decision and shall explicitly state that the interim rate increases are subject to refund and will be adjusted upward or downward back to the effective date of the interim rates, consistently with the final rates adopted by the Commission.

5. This proceeding remains open for resolution of the pending application.

This order is effective today.

Dated _____, at San Francisco, California.

