Decision _____

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 in 2009 in its Region II Service Area.	Application 06-02-023 (Filed February 14, 2006)

DECISION DISMISSING ORDER TO SHOW CAUSE AND CLOSING PROCEEDING

This decision dismisses the Order to Show Cause (OSC) that the Commission issued in this proceeding in Decision (D.) 08-01-020. The OSC is being dismissed as moot, because Golden State Water Company (GSWC) has agreed not to contest the findings concerning its conduct set forth in the OSC and in D.07-11-037. GSWC has also paid the $50,000 fine proposed in those decisions. Because the OSC is moot and there are no further issues to be decided in this docket, it is appropriate to close the proceeding.

A. Background

The Commission's decision to issue an OSC in this proceeding arose out of GSWC's conduct with respect to its direct and rebuttal testimony in the general office portion of this general rate case (GRC) proceeding. As noted in D.07-11-037, our decision on the merits in the GRC, the company presented a very thin showing in its direct testimony as to why 25 new general office positions were allegedly needed. When the Division of Ratepayer Advocates (DRA) objected in its testimony to most of these positions, GSWC responded

with over 200 pages of rebuttal testimony, which offered a much fuller justification for many of the disputed positions.

GSWC's rebuttal testimony was served on June 9, 2006, less than three weeks before evidentiary hearings were scheduled to begin on June 26. DRA promptly propounded extensive data requests in connection with the rebuttal testimony. On June 23 and 24, 2006, GSWC responded to the data requests by serving DRA with over 1,000 pages of documents and four CD-ROMs of material.

DRA objected that it had been "sandbagged," and on June 28, 2006, filed a motion to strike all of the rebuttal testimony of one witness and substantial portions of the rebuttal testimony of another witness. In making its motion, DRA placed particular reliance on a passage from D.04-03-039, in which the company had been admonished for very similar conduct in its last general office GRC. On July 5, 2006, GSWC filed a response to DRA's motion to strike, arguing that although it was long, all of the challenged testimony constituted proper rebuttal. (D.07-11-037, pp. 111-113.)

On July 7, 2006, the assigned Administrative Law Judge (ALJ) issued a ruling on the motion to strike. Although agreeing with DRA that the company's conduct had not been exemplary, the ALJ declined to strike the testimony at issue for several reasons, including the fact that the cross-examination dates for the witnesses in question had been postponed. Rather than strike the testimony DRA had challenged, the ALJ concluded that he should follow the Commission's "preferred practice" of "admit[ting] the testimony into the record, but then . . . afford[ing] it only so much weight as the presiding officer considers appropriate." (*Id.* at 113-114.)

In its opinion on the merits in the GRC, D.07-11-037, the Commission took a less charitable view of GSWC's conduct and concluded that a sanction was appropriate. After setting forth a summary of GSWC's conduct as described above, the Commission said:

> "We think it is clear that the manner in which GSWC presented its justification for the new positions here, by withholding much of the detailed rationale for them until rebuttal testimony, unfairly handicapped DRA in the preparation of its report and in its cross-examination of GSWC's witnesses. GSWC's repeated act of providing the principal justification for new general office positions in rebuttal testimony should be addressed beyond giving a stern warning and lecture. Accordingly, because of the prejudice to DRA (and hence to GSWC's ratepayers), our duty to protect our regulatory process, and the need to deter such conduct by GSWC and other utilities in the future, we intend to impose a penalty on GSWC for this conduct." (*Id.* at 118.)

After reviewing the criteria that the Commission uses to impose fines pursuant to the authority conferred by Pub. Util. Code §§ 2107-2108, D.07-11-037 continued:

> "[G]iven the totality of the circumstances, including GSWC's repeated conduct, its failure to take responsibility for its actions, and GSWC's financial resources, we believe that a fine of $50,000 is appropriate. By levying a fine against GSWC, we send a strong message to GSWC and other utilities that direct testimony is the time to address and justify its case. In particular, when there is a proposed rate change, new policy proposals or ideas, business changes that could or should influence the treatment of historic data, dramatic regulatory or environmental events and/or significant additions to the employee base or the capital budget, the burden is particularly obvious. Furthermore, as general office expenses are routinely contentious in water cases, it is not unreasonable to expect utilities to be forthcoming in their justifications of these expenses. The integrity of our regulatory process is best served when a utility

justifies and addresses the issues in its application in direct testimony." (*Id.* at 121-122.)

D.07-11-037 closed its discussion of the penalty issue by directing the Commission's Water Division to draft and prosecute an OSC, which would be treated as an adjudication rather than a ratesetting matter. (*Id.* at 122.)

On January 10, 2008, the Commission issued the OSC in the form of D.08-01-020. After setting forth the facts as described above, the OSC directed GSWC to show cause why it should not be fined $50,000 for "improperly wait[ing] until it submitted its rebuttal testimony to provide its justification with respect to at least half of the general office positions at issue." (D.08-01-020, p. 4.) The OSC also directed the assigned ALJ to convene a prehearing conference (PHC), after which a ruling with a schedule for the submission of testimony and hearings would be issued. (*Id.* at 4-5.)

On February 13, 2008, the ALJ informed the parties by e-mail that the PHC in connection with the OSC would be held on February 28, 2008. Each party was also directed to submit a PHC statement by the end of the day on February 26, 2008, which was to set forth a proposed schedule for the proceeding, a proposed list of witnesses, a description of any motions the party intended to file, and any other matters the party wished to bring to the Commission's attention in connection with the OSC.

B. GSWC's Decision Not to Contest the OSC and the Joint Motion for Dismissal of the OSC

The Water Division and DRA submitted PHC statements at mid-day on February 26. At the end of the day on February 26, counsel for GSWC sent the ALJ, as well as counsel for the Water Division and DRA, an e-mail stating that the company "does not intend to contest the OSC," and that it "wishes to

immediately pay the recommended fine of $50,000, without any further proceedings in this matter . . ." The e-mail also inquired who the payee of the $50,000 check should be.

After checking with the Assigned Commissioner's office and the Commission's Fiscal Office, the ALJ sent a responsive e-mail to the entire service list on February 27, 2008. This e-mail informed GSWC that another Commission decision would be needed to dismiss the OSC, and asked the company and the Water Division to submit a joint motion by March 7, 2008 noting that since GSWC had agreed to pay the $50,000 fine, there was no need to proceed with the OSC and it should be dismissed. The ALJ's e-mail also asked any party who had questions or concerns about this approach to contact him by e-mail immediately. No such e-mails were received.

On March 7, 2008, GSWC delivered to the Commission a check for $50,000, along with a joint motion signed by counsel for the company and the Water Division noting that the payment had been made, that GSWC had agreed not to contest the OSC, and that dismissal of the OSC was therefore appropriate.

C. Discussion

In view of the facts that GSWC has paid the proposed $50,000 fine and agreed not to contest the OSC, and that the Water Division has raised no objection to GSWC's proposal that the OSC should be dismissed, it makes sense to grant the dismissal and close this proceeding. We hope that as a result of this experience, GSWC and other water companies will make sure that in future GRCs, a full and complete justification for all of their proposals is set forth in the direct testimony for the proceeding.

D. Waiver of Comments on Proposed Decision

As explained above, this Proposed Decision (PD) grants the requested relief in what is now an uncontested matter. Under Rule 14.6(c)(2) of the Rules of Practice and Procedure, the Commission may waive the otherwise applicable 30-day period for public review and comment of a PD in such circumstances.

In addition, under Rule 14.7(a), no public review or comment is required of the decision in an uncontested matter "pertaining solely to one or more water corporations as defined in Public Utilities Code Section 241," as GSWC is. Thus, we have authority to waive comments on the instant PD under both Rules 14.6(c)(2) and 14.7(a), and it is appropriate to exercise that authority and grant such a waiver here.

E. Assignment of Proceeding

John Bohn is the assigned Commissioner, and A. Kirk McKenzie is the assigned ALJ for this proceeding.

Findings of Fact

1. In D.07-11-037, the Commission concluded that despite being warned against such conduct in a prior rate case, GSWC had withheld until rebuttal testimony the full justification for at least 10 of the new general office positions the company was seeking in A.06-02-023.

2. D.07-11-037 also concluded that a $50,000 fine was appropriate in view of this conduct, and directed the Water Division to draft and prosecute on behalf of the Commission an order directing GSWC to show cause why it should not be fined $50,000 on account of its conduct with respect to the general office positions in question.

3. The OSC was issued as D.08-01-020. Among other things, it directed the assigned ALJ to set the date for a PHC at which a schedule for the OSC proceeding would be determined.

4. On February 13, 2008, the ALJ informed the parties by e-mail that the necessary PHC would be held on February 28, 2008, and directed that PHC statements should be submitted on February 26, 2008.

5. Rather than submit a PHC statement, GSWC informed the ALJ late in the day on February 26, 2008 that the company would not contest the OSC and would pay the recommended $50,000 fine immediately, assuming this would obviate the need for further proceedings in connection with the OSC.

6. On February 27, 2008, the ALJ informed GSWC and all other parties that even with a prompt payment of the fine, a Commission decision dismissing the OSC would be necessary. The ALJ also directed GSWC and the Water Division to file a joint motion seeking such relief by March 7, 2008.

7. On March 7, 2008, GSWC and the Water Division filed a joint motion stating that (a) GSWC had paid the $50,000 fine and would not contest the OSC, (b) there was no reason not to dismiss the OSC in view of these actions, and (c) noting that no party on the service list had raised any objection to this proposed course of action.

Conclusions of Law

1. In view of GSWC's decisions to pay the $50,000 fine recommended in D.07-11-037 and D.08-01-020 and not to contest the OSC, the OSC in this proceeding should be dismissed.

2. Since no other issues remain in this proceeding, this docket should be closed.

O R D E R

IT IS ORDERED that:

1. In view of (a) the payment by Golden State Water Company (GSWC) of the $50,000 fine proposed in Decision (D.) 08-01-020, the Order to Show Cause (OSC) in this proceeding, and (b) GSWC's decision not to contest the findings in the OSC, the relief sought in D.08-01-020 has been satisfied, and GSWC has fully discharged its obligations thereunder.

2. In view of the events referred to in Ordering Paragraph 1, the OSC in this proceeding is dismissed.

3. Application 06-02-023 is closed.

This order is effective today.

Dated _____, at San Francisco, California.