

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 9, 2010

Draft Resolution W-4843
Agenda ID #9764

TO: All Interested Parties

Enclosed is draft Resolution W-4843 of the Division of Water and Audits. It will be on the Commission's October 14, 2010 agenda. The Commission may act then act on this resolution or it may postpone action until later.

When the Commission acts on a draft resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different resolution. Only when the Commission acts does the resolution become binding on the parties.

Parties to this matter may submit comments on this draft resolution. An original and two copies of the comments, with a certificate of service, should be submitted to:

Division of Water and Audits, Third Floor
Attention: Carolina Contreras
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Parties may submit comments on or before October 4, 2010. The date of submission is the date the comments are received by the Division of Water and Audits. Parties must serve a copy of their comments on the utility on the same date that the comments are submitted to the Division of Water and Audits.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft resolution, a table of authorities and appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on the factual, legal, or technical errors in the draft resolution, and shall make specific reference to the record or applicable law. Comments which fail to do so will be accorded no weight and are not to be submitted.

Persons interested in comments of parties may write to Carolina Contreras, email her at ccg@cpuc.ca.gov, or telephone her at (415) 703-5090.

/s/RAMI S. KAHLON
Rami S. Kahlon, Director
Division of Water and Audits

Enclosures: Draft Resolution W-4843
Certificate of Service
Service List

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch**

**RESOLUTION NO. W-4843
October 14, 2010**

R E S O L U T I O N

(RES. W-4843), NORTH GUALALA WATER COMPANY (North Gualala). ORDER DENYING SURCHARGE RECOVERY OF “DEFERRED CHARGES” REQUESTED NORTH GUALALA BY ADVICE LETTER (AL) NO. 68.

SUMMARY

This resolution denies North Gualala the rate relief requested in AL No. 68, filed on June 4, 2009 to recover from ratepayers \$420,533.24 for “water rights defense costs” recorded under Account 180 “Deferred Charges” as Items in Suspense. Rate recovery of these costs was obtained by North Gualala in its general rate case (GRC) approved by Res. W-4714, when the Commission authorized North Gualala’s request to include said “Deferred Charges” in rates and thereby to recover and amortize them over future periods.

BACKGROUND

North Gualala is a class C water utility serving approximately 1,041 metered customers in Gualala and vicinity and located approximately 15 miles south of Point Arena, Mendocino County. North Gualala supplies its customer base with water pumped from two production wells, Wells Nos. 4 and 5, located in an area known as Elk Prairie on the North Fork Gualala River.

By AL No. 68, filed on June 4, 2009, North Gualala requests authority to recover from its customers, via a five-year monthly surcharge, \$420,533.24 for “water rights defense” costs consisting of legal fees and consultant costs incurred over a

six-year period - from January 2000 through August 2006 - that North Gualala asserts were “necessary to defend, under challenge by another state agency [the State Water Resources Control Board (SWRCB)], their right to pump water from its wells and to maintain the Standards of Service required by General Order (GO) 103”. North Gualala recorded those costs under Account 180 “Deferred Charges” as items in suspense, consisting of costs for attorneys and professional experts retained by North Gualala from 2000 through 2006 while participating in formal proceedings and undertaking a lawsuit against the SWRCB.

At the center of North Gualala’s request lies a dispute over the nature and source of the water pumped from its production Wells Nos. 4 and 5, with North Gualala contending that the water in question is percolating groundwater for which no water rights permit is needed and disagreeing with the SWRCB’s determination that it flows in a subterranean stream subject to that agency’s permitting authority. The water rights dispute was resolved upon conclusion of the lawsuit on August 2006.

DISCUSSION

According to the Uniform System of Accounts for Class B, C, and D Water Utilities, Account 180 is a “Deferred Charges” account defined by the Commission as a “standard rate-making account - not a memorandum account - but [that] it likewise provides some flexibility that avoids the prohibition of retroactive ratemaking”¹. Subject to reasonableness review, amounts listed as “items in suspense” under Account 180 “Deferred Charges” may be recovered from ratepayers once the Commission determines they ought to be recovered in addition to, and are not already recovered in, otherwise authorized rates.

In order to distinguish and “appropriately subdivide” those “water rights defense costs” from other “Deferred Charges” under Account 180, as required by the Uniform System of Accounts, North Gualala created a subaccount for the sole purpose of recording its costs related to “defending its water rights and

¹ D. 02-11-004, p.10, (mimeo)

continuing to preserve its water supply from January 2000 through August 2006.”

The Commission requires water utilities to list and identify under Schedule A-5 of their Annual Reports all “Deferred Charges” and the corresponding subaccounts. The subaccount North Gualala created to record the “water rights defense costs” is identified under Schedule A-5 as “Contingency Plan”. The Division of Water and Audits (Division) audited the costs submitted for recovery in AL No. 68 and confirmed that those “Deferred Charges” are the same as the costs reported in the “Contingency Plan” subaccount listed in Schedule A-5. This subaccount contains a balance of \$420,533.24 - the amount of “Deferred Charges” requested by North Gualala in AL No. 68 - with the last charge to the subaccount made in 2006 - consistent with North Gualala’s description of the account in AL No. 68.

North Gualala states in AL No. 68 that it excluded the “water rights defense” costs from its last GRC request, which was approved by the Commission on October 2, 2008 through Res. W-4714. However, North Gualala’s approved GRC work papers and its annual reports show that its current rates do include recovery of those “water rights defense costs” contained in AL No. 68.

Res. W-4714 approved North Gualala’s GRC request of \$111,620 for “Professional Services” expenses, which includes \$51,879 for “Contingency Plan” costs pertaining to a SWRCB “water rights lawsuit”. However, North Gualala’s only SWRCB water rights lawsuit concluded on August 2006 - well before the Commission’s October 2008 approval of that GRC - and those “water rights defense” costs were recorded as “Deferred Charges” and are now included in AL No. 68 for recovery. North Gualala has not since undertaken any other water rights lawsuits. The Division’s review of North Gualala’s GRC workpapers, its annual reports and AL No. 68 show that the “Contingency Plan” costs requested and approved in its GRC were not actually recorded as “Professional Service” expenses, but instead booked as “Deferred Charges” under the same “Contingency Plan” subaccount that North Gualala created for the sole purpose of recording “water rights defense costs” incurred between “January 2000 through August 2006” and now the subject of AL No. 68. A comparison review of the dollar amounts and scope of the “Contingency Plan”

costs requested by North Gualala and approved by the Commission to be included in its GRC rates with the dollar amounts and scope of the “water rights

defense costs” contained in AL No. 68 show that they are not different costs, but that the costs recovered through the GRC are actually contained in AL No. 68. “Deferred Charges” include “expenses of security issues, bond discount, items in suspense, and costs which *Commission has authorized the utility to amortize over future periods*”². If the Commission determines that items recorded as “Deferred Charges” in Account 180 ought to be recovered in addition to, and are not already recovered in, otherwise authorized rates, including a review of their reasonableness, those items may be recovered through the ratemaking process in a period different from when the costs were incurred. North Gualala’s “Contingency Plan” costs are non-recurring costs recorded as “Deferred Charges”, incurred prior to North Gualala’s GRC request, and included in rates through the rate-making process. Rate recovery of said “Contingency Plan” costs - which are the same “water rights defense costs” contained in AL No. 68 -, was obtained when the Commission approved North Gualala’s own GRC request to include those previously incurred, non-recurring “Deferred Charges” in rates as part of its “Professional Services” expenses and effectively authorized North Gualala to amortize said costs over future periods in a “deferred” recovery manner.

North Gualala’s GRC request to recover those costs through rates is not the typical rate-making method for recovering non-recurring costs. A more typical recovery mechanism of such non-recurring costs would have been through a surcharge, as is the case for memorandum accounts. However, Account 180 “is not a memorandum account” but is instead a “standard rate-making account” with “flexibility that avoids the prohibition of retroactive ratemaking”. As the costs contained in AL No. 68 are already included in authorized rates, granting North Gualala’s recovery request would permit double-recovery of the same costs, which is expressly prohibited by the Commission. North Gualala’s request should be denied.

² Uniform System of Accounts for Class B, C and D Water Utilities

In its GRC, North Gualala sought and received authority to recover “Contingency Plan” costs by amortizing them over future periods at a rate of \$51,872 per year from the date the rates became effective.³ Beginning from the

date the GRC rates approved by Res. W-4714 became effective, North Gualala should be amortizing the “Deferred Charges” balance of \$420,533.24 contained under its “Contingency Plan” subaccount of Account 180 by yearly charges of \$51,872 to its “Professional Services” expense account. North Gualala must revise its accounting records and Annual Reports from the date the GRC rates became effective to reflect the amortization described above.

On August 26, 2010, North Gualala filed with the Division a draft advice letter requesting a GRC. When it finalizes this GRC request, consistent with this resolution, North Gualala must explicitly address its treatment and amortization of State Water Resources Control Board’s the “Deferred Charges” that are currently being collected at the rate of \$51,872 per year and how this collection will be eliminated when the balance of the “Deferred Charges” booked to the “Contingency Plan” subaccount of Account 180 is fully amortized. Consistent with the Uniform System of Accounts for Class B, C and D Water Utilities and its own description of this subaccount as consisting of costs of litigation now over, North Gualala shall not record to it any other costs.

NOTICE AND PROTESTS

In accordance with Section 4.3 of General Order (G.O.) 96-B, North Gualala served AL No. 68 on its G.O. 96-B service list attached as Appendix D to AL No. 68.

Pursuant to Section 4.2 of G.O. 96-B North Gualala mailed a notice of the proposed surcharge to all of its customers on August 26, 2009. The Division received letters from four customers, and North Gualala replied to three of the

³ Small water utilities like North Gualala are not required to come in for a GRC within a specified period of time, in fact most do not even do so every three years as the large water utilities do. For example, North Gualala allowed a period of eighteen years between its most recent approved GRC.

four customers. An anonymous customer sent the fourth letter. These customers opposed ratepayer responsibility for North Gualala's legal battles.

COMMENTS

PU Code Section 311(g) (1) provides that resolutions generally must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft Resolution was mailed to the utility and to the customer who submitted a letters and made available for public comment on September 14, 2010. Comments were received from

FINDINGS

1. North Gualala requests authority to recover from its customers, via a five-year monthly surcharge, \$420,533.24 for “water rights defense costs” consisting of legal fees and consultant costs.
2. North Gualala recorded those costs under Account 180 “Deferred Charges” as “items in suspense”.
3. Account 180 is a “Deferred Charges” account defined by the Commission as a “standard ratemaking account – not a memorandum account – but [that] it likewise provides some flexibility that avoids the prohibition of retroactive ratemaking”.
4. Subject to reasonableness review, amounts listed as “items in suspense” under Account 180 “Deferred Charges” may be recovered from ratepayers once the Commission determines they ought to be recovered in addition to, and are not already recovered in, otherwise authorized rates,
5. Res. W-4714 authorized North Gualala’s most recent GRC and approved its request for \$111,620 for “Professional Services” expenses, which includes \$51,879 for “Contingency Plan” costs pertaining to a SWRCB “water rights lawsuit”.
6. North Gualala’s approved GRC work papers and its annual reports show that its current rates include recovery of those “water rights defense costs” contained in AL No. 68.
7. “Deferred Charges” include “expenses of security issues, bond discount, items in suspense, and costs which *Commission has authorized the utility to amortize over future periods*”.
8. If the Commission determines that items recorded as “Deferred Charges” in Account 180 ought to be recovered in addition to, and are not already recovered in, otherwise authorized rates, including a review of their

reasonableness, those items may be recovered through the rate-making process in a period different from when the costs were incurred.

9. North Gualala's "Contingency Plan" costs are non-recurring costs recorded as "Deferred Charges", incurred prior to North Gualala's GRC request, and included in rates through the rate-making process.
10. Rate recovery of the "Contingency Plan" costs - which are the same "water rights defense costs" contained in AL No. 68 -, was obtained when the Commission approved North Gualala's own GRC request to include those previously incurred, non-recurring "Deferred Charges" in rates through its "Professional Services" expenses and effectively authorized North Gualala to amortize said costs over future periods in a "deferred" recovery manner.
11. The costs contained in AL No. 68 are already included in rates.
12. Granting North Gualala's recovery request would permit double-recovery of the same costs.
13. Double-recovery of costs is expressly prohibited by the Commission.
14. North Gualala's request should be denied.
15. In its GRC, North Gualala sought and received authority to recover "Contingency Plan" costs by amortizing them over future periods at a rate of \$51,872 per year from the date the rates became effective.
16. Beginning from the date the GRC rates approved by Res. W-4714 became effective, North Gualala should be amortizing the "Deferred Charges" balance of \$420,533.24 contained under its "Contingency Plan" subaccount of Account 180 by yearly charges of \$51,872 to its "Professional Services" expense account.
17. Pursuant to the amortization described under the immediately preceding Finding, North Gualala must revise its accounting records and Annual Reports beginning from the date the GRC rates became effective.
18. On August 26, 2010, North Gualala filed with the Division a draft advice letter requesting a GRC.
19. When it finalizes this GRC request, consistent with this resolution, North Gualala must explicitly address its treatment and amortization of the "Deferred Charges" that are currently being collected at the rate of \$51,872 per year and how this collection will be eliminated when the balance of the "Deferred Charges" booked to the "Contingency Plan" subaccount of Account 180 is fully amortized.

20. North Gualala shall not record any other costs to the "Contingency Plan" subaccount.

THEREFORE IT IS ORDERED THAT:

1. The relief requested by North Gualala Water Company in AL No. 68 is denied.
2. Beginning from the date the General Rate Case rates approved by Res. W-4714 became effective, North Gualala shall amortize the "Deferred Charges" balance of \$420,533.24 contained under its "Contingency Plan" subaccount of Account 180 by yearly charges of \$51,872 to its "Professional Services" expense account.
3. Within 30 days of the effective date of this resolution, North Gualala shall revise its accounting records and Annual Reports to reflect the accounting required by the immediately preceding Ordering Paragraph.
4. When it finalizes its current GRC request, consistent with this resolution, North Gualala shall explicitly address its treatment and amortization of the "Deferred Charges" that are currently being collected at the rate of \$51,872 per year and how this collection will be eliminated when the balance of the "Deferred Charges" booked to the "Contingency Plan" subaccount of Account 180 is fully amortized.
5. North Gualala shall not record any other costs to the "Contingency Plan" subaccount of Account 180 "Deferred Charges".

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 October 14, 2010; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Resolution W-4843 on all parties in these filings or their attorneys as shown on the attached list.

Dated September 9, 2010, at San Francisco, California.

_____/s/ JOSIE L. JONES

Josie L. Jones

Parties should notify the Division of Water and Audits, Public Utilities Commission, 505 Van Ness Avenue, Room 3106, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number of the service list on which your name appears.

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