

Decision 09-08-007 August 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

<p>In the Matter of the Application of SAN GABRIEL VALLEY WATER COMPANY (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division by \$5,662,900 or 13.1% in July 2006; \$3,072,500 or 6.3% in July 2007; and by \$2,196,000 or 4.2% in July 2008.</p>	<p>Application 05-08-021 (Filed August 5, 2005)</p>
<p>Order Instituting Investigation on the Commission’s Own Motion into the Rates, Operations, Practices, Service, and Facilities of San Gabriel Valley Water Company (U337W).</p>	<p>Investigation 06-03-001 (Filed March 2, 2006)</p>

(See Attachment C for List of Appearances.)

**DECISION ADOPTING SETTLEMENT AGREEMENT
RESOLVING RULE 1 REHEARING CONTROVERSIES**

Summary

This decision adopts a Settlement Agreement between San Gabriel Valley Water Company and the Division of Ratepayer Advocates that resolves Rule 1 rehearing controversies over the sufficiency of San Gabriel Valley Water Company’s disclosure of facts about an affiliate transaction by setting in place a firm and definite set of rules and procedures set forth in Attachment A of this decision to avoid any similar controversies in the future. This consolidated proceeding is closed.

1. Background

In Decision (D.) 07-04-046, we addressed San Gabriel Valley Water Company's 2006-2007 test year General Rate Case (GRC) Application 05-08-021 and Commission Investigation 06-03-001 into San Gabriel Valley Water Company's operations, practices, service, and facilities. That decision, among other matters, imposed a \$20,000 fine for each of three separate Rule 1 violations of the Commission's Rules of Practice and Procedure (Rules) for a total of \$60,000.¹

The Rule 1 violations assessed against San Gabriel Valley Water Company were for its failure to sufficiently disclose that: (1) land it was seeking to place in ratebase was purchased from an affiliate; (2) the purchase price of the land was not based on market price, and it was based on an appraiser hired and paid for by the company; and (3) the purchase price was significantly above the price paid by the affiliate only a year and a half earlier.

San Gabriel Valley Water Company timely filed an application for rehearing of D.07-04-046 alleging, among other matters, that it was deprived of due process because the Commission stated the three Rule 1 violations for the first time in the final decision. A limited rehearing of D.07-04-046 to consider whether San Gabriel Valley Water Company had actually violated Rule 1 was granted pursuant to D.08-06-024. The \$60,000 fine, which had previously been paid by San Gabriel Valley Water Company, was made subject to refund depending on the outcome of this limited rehearing proceeding.

¹ Rule 1 is an ethics rule that requires parties doing business with the Commission to never mislead the Commission or its staff by an artifice or false statement of fact or law.

2. Settlement Agreement

A Settlement Agreement between San Gabriel Valley Water Company and the Division of Ratepayer Advocates (Settling Parties) was filed with the Commission on June 26, 2009, three days prior to the evidentiary hearing. For purposes of settlement and without admitting any lack of merit, the Settling Parties agreed not to pursue or defend the Rule 1 allegations and that the Settlement Agreement does not constitute a finding of a violation of Rule 1 or an admission of liability by San Gabriel Valley Water Company and that the \$60,000 payment previously made by San Gabriel Valley Water Company is not and shall not be construed as a penalty or fine. Nevertheless, for purposes of settlement and without admitting any liability, San Gabriel Valley Water Company has agreed to waive its claim for refund of the \$60,000 previously paid to the State of California.

That Settlement Agreement provides for San Gabriel Valley Water Company to set in place a firm and definitive set of affiliate transaction rules and procedures to avoid any similar controversies in the future. The firm and definitive set of affiliate transaction rules San Gabriel Valley Water Company agreed to implement and comply with were:

1. Affiliate transaction rules set forth in the Division of Water and Audits' Standard Practice U-21-W, Attachment B to the decision.
2. Affiliate transaction rules that will be adopted by the Commission in its pending Order Institute Rulemaking 09-04-012.
3. Disclose and document in all future GRC filings affiliate transactions that have occurred over the five-year period preceding a GRC test year and are planned to occur during the three-year GRC cycle.

3. Discussion

Testimony on alleged Rule 1 violations was received from San Gabriel Valley Water Company, the Division of Ratepayer Advocates, and jointly by the Division of Ratepayer Advocates, City of Fontana, and Fontana Unified School District at the June 29, 2009 evidentiary hearing.

Counsels for San Gabriel Valley Water Company and the Division of Ratepayer Advocates also summarized their Settlement Agreement at the evidentiary hearing. Although the City of Fontana and Fontana Unified School District were not signatories to the settlement agreement, they do not oppose Commission approval of the Settlement Agreement. There are no other active parties to this proceeding.

The general criteria for approval of settlements are stated in Rule 12.1(d). Specifically, the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

The Settlement Agreement meets the criteria for a settlement pursuant to Rule 12.1(d), as discussed below.

3.1. Reasonable in Light of the Record

The prepared testimony, the Settlement Agreement itself, and the Settling Parties' motion contain the information necessary for the Commission to find the Settlement Agreement reasonable in light of the record. Prior to the settlement, parties conducted discovery and distributed prepared testimony.

The prepared testimony of the parties comprising the record for this proceeding demonstrates reasonable differences between the Settling Parties on the extent that San Gabriel Valley Water Company disclosed the land it purchased from an affiliate, fair value determination based on market value

versus an independent appraisal, and the date and price its affiliate paid for the land. This prepared testimony contains sufficient information for the Commission to conclude that the Settlement Agreement which provides a clear rule for the future represents a reasonable compromise of the parties' positions and is reasonable in the light of the entire record of this proceeding.

3.2. Consistent With Law

Upon review of the Settlement, we conclude that the terms of the Settlement Agreement comply with all applicable statutes and prior Commission decisions, and reasonable interpretations thereof. In agreeing to the terms of the Settlement Agreement, the Settling Parties have explicitly considered the relevant statutes and Commission decisions and believe that the Commission can approve the Settlement Agreement without violating applicable statutes or prior Commission decisions.

3.3. Public Interest

The Settlement Agreement is in the public interest and in the interest of San Gabriel Valley Water Company's customers. For example, the issue leading to the alleged Rule 1 violations pertained to transactions that San Gabriel Valley Water Company entered into with its affiliates that may not have been fully disclosed. The Settlement Agreement provides for San Gabriel Valley Water Company to implement affiliate transaction procedures and to provide documentation of those affiliate transactions upfront as part of its future GRC filings.

4. Comments on Proposed Decision

The proposed decision of the assigned Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311

and comments were allowed under Rule 14.3. There were no filed comments to the proposed decision.

5. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Michael J. Galvin is the assigned ALJ in this limited rehearing proceeding.

Findings of Fact

1. D.07-04-046 imposed a \$20,000 fine for each of three separate Rule 1 violations for a total of \$60,000.

2. San Gabriel Valley Water Company timely filed an application for rehearing on the basis that it was deprived of due process because the Commission stated the three Rule 1 violations for the first time in the final decision.

3. D.08-06-024 granted a limited rehearing of D.07-04-046 to consider whether San Gabriel Valley Water Company had actually violated Rule 1. The \$60,000 fine, which had previously been paid by San Gabriel Valley Water Company, was made subject to refund depending on the outcome of this limited rehearing proceeding.

4. A Settlement Agreement between San Gabriel Valley Water Company and the Division of Ratepayer Advocates was filed with the Commission on June 26, 2009.

5. Testimony on alleged Rule 1 violations was received from San Gabriel Valley Water Company, the Division of Ratepayer Advocates, and jointly by the Division of Ratepayer Advocates, City of Fontana, and Fontana Unified School District at the June 29, 2009 evidentiary hearing.

6. The general criteria for approval of settlements are stated in Rule 12.1(d).

7. The Settling Parties San Gabriel Valley Water Company and the Division of Ratepayer Advocates agreed not to pursue or defend the Rule 1 allegations and that the Settlement Agreement does not constitute a finding of a Rule 1 violation or an admission of liability by San Gabriel Valley Water Company.

8. The Settling Parties agree that the \$60,000 payment previously made by San Gabriel Valley Water Company to the State of California is not and shall not be construed as a penalty or fine.

9. For purposes of settlement and without admitting any liability, San Gabriel Valley Water Company has agreed to waive its claim for refund of the \$60,000 previously paid to the State of California.

10. There is no opposition to the Settlement Agreement.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

2. The Settlement Agreement is not precedential in any other proceeding before this Commission.

3. The Settlement Agreement provides for San Gabriel Valley Water Company to implement affiliate transaction procedures and to provide documentation of those affiliate transactions upfront as part of its future GRC filings.

4. The Settlement Agreement does not constitute a finding of a violation of Rule 1 or an admission of liability by San Gabriel Valley Water Company.

5. The \$60,000 payment previously made by San Gabriel Valley Water Company to the State of California is not and shall not be construed as a penalty or fine.

6. The Settlement Agreement should be adopted.

7. Because of the public interest in the Settlement Agreement, the following Decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Attachment A Settlement Agreement entered into on June 26, 2009 between San Gabriel Valley Water Company and the Division of Ratepayer Advocates is approved.
2. The \$60,000 payment previously made by San Gabriel Valley Water Company to the State of California pursuant to Decision 08-06-024 is not refundable and shall not be construed as a penalty or fine.
3. San Gabriel Valley Water Company shall identify and explain in each of its future general rate case filings all contracts and transactions with and services provided to corporate affiliates involving utility employees or assets, or resulting in costs included or proposed to be included in revenue requirement that have occurred over a five-year period preceding the general rate case test year or are planned to occur during the three-year general rate case cycle beginning with the test year and are known as of the date of the general rate case filing.
4. San Gabriel Valley Water Company shall implement all procedures and comply with all applicable rules to be adopted by the Commission in Order Instituting Investigation 09-04-012.
5. Until the Commission adopts water utility affiliate transaction rules in Order Instituting Investigation 09-04-012, San Gabriel Valley Water Company shall implement the procedures set forth in Rules 17 through 21 of the Division of Water and Audits' Standard Practice U-21-W for Non-Tariff Service Offerings and Information On Affiliate Transactions, as set forth in Attachment B.

6. Application 05-08-021 and Investigation 06-03-001 are closed.

This order is effective today.

Dated August 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners