

Decision 10-12-062

December 16, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Great Oaks Water
Company (U162W) for Rehearing of
Resolution W-4838.

Application 10-09-008
(Filed on September 10, 2010)

ORDER DENYING REHEARING OF RESOLUTION W-4838

I. BACKGROUND

The Great Oaks Water Company (Great Oaks) is a public utility water retailer located in Santa Clara County, California. The Santa Clara Valley Water District (SCVWD) is responsible for managing the overall water supply in Santa Clara County. Although it has limited authority to mandate water use restrictions, SCVWD passed Resolution 09-25 on March 24, 2009, in response to a third consecutive year of drought and a water shortage. Resolution 09-25 called for mandatory water conservation of 15% for the remainder of 2009. During the summer of 2009, Great Oaks informed its customers that despite the request for water rationing in Santa Clara County, its customers “are fortunate to have water supplied from bountiful underground aquifers” and did not require any rationing. (See Commission Resolution W-4838 at p. 3.)

On July 16, 2009, Great Oaks filed Advice Letter (AL) 196-W, requesting interim rates pursuant to *Opinion Adopting Revised Rate Case Plan for Class A Water Utilities*, Decision (D.) 07-05-062,¹ because it was late in filing its general rate case

¹ Citations herein are to the pdf electronic versions of the Commission’s decisions. Electronic versions of Commission decisions issued after July 2000 can be found on the Commission’s website at: <http://www.cpuc.ca.gov/PUC/documents>.

(GRC) beyond the three year cycle. (By letter of May 4, 2009, Great Oaks received permission from the Commission's Executive Director to delay filing its GRC until Tuesday, September 1, 2009.) On Thursday, September 3, 2009, Great Oaks filed its GRC application (A.) 09-09-001, requesting new rates to take effect on July 1, 2010. (A.09-09-001 at p. 5.) On September 8, 2009, the Commission's Division of Water and Audits (DWA) approved AL 196-W, as supplemented, with an effective date of September 1, 2009. On October 19, 2009, Great Oaks supplemented and updated A.09-09-001, in part, in response to the approval of AL 196-W. Included in the Great Oaks update to A.09-09-001, is a reference to a June 23, 2009 Assigned Commissioner (AC) ruling in Great Oaks' cost of capital application, A.09-05-007; Great Oaks included the following quotation from that ruling on page 5 of its October 19 update:

Great Oaks will be allowed to consolidate its cost of capital application, A.09-05-007, with its next general rate case which is to [be] filed later this summer. If the general rate case is delayed any further, A.09-05-007 will be taken up separately. One consequence is that Great Oaks assumes the risk of any loss in revenue requirement that might result due to the delay in adopting a new cost of capital concurrent with its general rate case. Regardless of whether Great Oaks files a general rate case in 2009, A.09-05-007 will be processed to adopt a fair and reasonable 2010 base year cost of capital; the appropriate capital structure, embedded costs of debt and other non-equity securities; and a just and reasonable return on equity.

(See June 23, 2009 AC ruling in A.09-05-007 at p. 4.)

On December 8, 2009, the SCVWD passed another resolution (Resolution 09-82). The new resolution extended the 15% mandatory water conservation authorized by Resolution 09-25 through June 30, 2010, because, due to the time of year, it did not have a complete picture of the 2010 water supply outlook.

On February 2, 2010, Great Oaks filed AL 197-W, seeking authority to establish two memorandum accounts: a Mandatory Conservation Memorandum Account

(MCMA) and a Mandatory Conservation Revenue Adjustment Memorandum Account (MCRAMA). In AL 197-W, Great Oaks informed the Commission that its groundwater supply was “currently adequate for its customer use;” however, “Great Oaks is expected locally to encourage ... compliance with the [SCVWD’s] mandatory conservation request.” (AL 197-W at p. 2.) Great Oaks, however, did not provide the Commission with information regarding what, if any, actions it had taken or planned to undertake to encourage compliance with the SCVWD’s mandatory conservation request.

On February 11, DWA rejected AL 197-W because Great Oaks failed to address the criteria required by D.02-08-054, Standard Practice U-27-W, and Resolution W-4276 for establishing either of the two memorandum accounts.² On February 19, 2010, Great Oaks requested review by the Commission of DWA’s rejection of AL 197-W.

On February 22, 2010, the Commission’s Division of Ratepayer Advocates (DRA) filed a timely protest to AL 197-W. On February 26, 2010, Great Oaks filed a reply to DRA’s protest. On July 1, 2010, Great Oaks filed AL 198-W, requesting to extend its interim rates from July 1, 2010 until the Commission issued a final decision in its GRC. On August 12, 2010, the Commission issued Resolution W-4838, affirming DWA’s rejection of AL 197-W.

On September 10, 2010, Great Oaks filed its application for rehearing of Resolution W-4838, contending the resolution is erroneous on the following grounds: (1) the effective date for the interim rates should be July 1, 2009, not September 1, 2009; (2) interim rates due to Great Oaks experiencing a delay in filing its GRC are to be established by an AL, not by a GRC application; (3) SCVWD’s extension of its mandatory water conservation was not foreseeable at the time Great Oak’s filed its GRC;

² *In the Matter of the Application of California Water Service Company, a Corporation, for an Order Authorizing It to Increase Rates Charged for Water Service at Each of Its Operating Districts to Recover Increased Operating Expenditures at Its General Office*, D.02-08-054; Standard Practice U-27-W: Standard for Processing Rate Offsets and Establishing and Amortizing Memorandum Accounts (2008); Resolution W-4276 (July 12, 2001).

(4) Great Oaks is similarly situated to San Jose Water Company for purposes of establishing memorandum accounts in response to actions by the SCVWD; and (5) Great Oaks is prejudiced by rejection of AL 197-W. On September 27, 2010, the Commission's Division of Ratepayer Advocates (DRA) filed a response opposing the application for rehearing.

After careful consideration of all the arguments presented by Great Oaks' application for rehearing of Resolution W-4838, we are of the opinion that good cause for rehearing has not been demonstrated. Accordingly, Great Oaks' application for rehearing of Resolution W-4838 is denied.

II. DISCUSSION

A. **The interim rates are to be adjusted back to their effective date, under established Commission procedures, once a decision on the Great Oaks' GRC is issued.**

When Great Oaks filed its GRC application in September 2009, it requested rates to be effective as of July 1, 2010. Great Oaks challenges Finding of Fact/Conclusion of Law Number 14 in Resolution W-4838, which provided that "[t]he effective date for rate changes in A.09-09-001 will begin on September 1, 2009." Great Oaks argues that "the effective date of the rates to be established in its GRC is July 1, 2010, not September 1, 2010." (Great Oaks' application for rehearing at p. 3.) Great Oaks filed AL 196-W on July 16, 2009, requesting interim rates, and DWA accepted Great Oaks' AL 196-W on September 8, 2009, and allowed interim rates to go into effect as of September 1, 2009. Great Oaks filed AL 196-W because it was delayed in filing its GRC, which was due to be filed by September 1, 2009 (however, Great Oaks did not file its GRC application until September 3, 2009). The interim rates went into effect on September 1, 2009. "These interim rates, when approved, will be subject to refund and shall be adjusted upward or downward back to the effective date of the interim rates with the adoption of final rates by the Commission at the conclusion of a GRC scheduled under the RCP [i.e., Rate Case Plan]." (D.07-05-062, Appendix A at pp. A2-A3; and see, Resolution W-4838 at p. 3.) Thus, any adjustment (to be made in A.09-09-001) will be to

September 1, 2009, the date the interim rates went into effect. To the extent that Great Oaks may be seeking to use its application for rehearing of Resolution W-4838 as a challenge to D.07-05-062, it is untimely and prohibited by Public Utilities Code sections 1709 and 1731(b).³ Great Oaks has not established error in Resolution W-4838 on this issue.

B. The advice letter process for establishing interim rates was properly followed.

Great Oaks contends that interim rates are to be established by AL, not by its GRC. DWA approved Great Oaks' AL 196-W and authorized its interim rates to take effect on September 1, 2009. Pursuant to D.07-05-062, for transition cases involving Class A water utilities, interim rate requests are to be made by AL. (D.07-05-062, Appendix A, section II.B at p. A-2.) Ultimately, those interim rates will be adjusted in the final GRC decision in A.09-09-001. (*Id.* at p. A-3.) Great Oaks argues that because AL 196-W requested interim rates to take effect on July 1, 2009 (fifteen days before AL 196-W was filed and nearly two months before its GRC application was filed), that is the date that its interim rates should have become effective, rather than September 1, 2009. However, General Order 96-B, § 7.3, et seq., governs the effective date for AL filings. Further, pursuant to D.07-05-062 at page 10:

The proposed [rate case plan] RCP addressed the issue of rate adjustments under [Public Utilities Code] [s]ection 455.2(c) during the transition to the new RCP. Our proposal in the OIR was as follows: for districts where the last review of rates was more than three years earlier, the utility may seek an annual rate change, subject to refund and limited to the rate of inflation, by a Tier 2 advice letter....

[¶] ...We conclude that companies experiencing a delay in their GRCs under our new RCP may seek a rate modification,

³ Public Utilities Code section 1709 provides: "In all collateral actions or proceedings, the orders and decisions of the [C]ommission which have become final shall be conclusive." Public Utilities Code section 1731(b) provides that challenges to a Commission decision must be made in an application for rehearing within 30 days of the decision's issuance.

subject to refund as set forth below, via an advice letter.[footnote deleted] Our adopted procedure is set forth at II(B) of the RCP. Section II(B) also sets forth the procedure for seeking permission to forego a GRC filing. We will not limit the rate changes sought in these filings to the rate of inflation. However, interim rates under [s]ection 455.2(c), when approved, will be subject to refund and shall be adjusted upward or downward back to the effective date of the interim rates upon the adoption of final rates by the Commission at the conclusion of a GRC scheduled under the RCP. This procedure will only apply during our transition to the new RCP when the new RCP plan delays a water utility's GRC beyond the three-year cycle set forth in [s]ection 455.2(c).

Great Oaks had proposed a July 1, 2010 test year date in its GRC application; however that application was not timely filed and was delayed until September 3, 2009. On page 7 of A.09-09-001, Great Oaks requested that, "... [i]n the event that the Commission's decision is not effective as of July 1, 2010, then Great Oaks may file for authorization to implement interim rates... after September 1, 2009." Further, in its October 19, 2009 update to A.09-09-001, Great Oaks specifically requested that:

...[P]ursuant to PUC Code [sic] § 455.2 that the Commission issues its final determination on this application in such a way that the decision becomes effective on July 1, 2010, the first day of the proposed test year. In the event the Commission's decision is not effective as of July 1, 2010, then Great Oaks may file for authorization to implement interim rates. Great Oaks requests that it be permitted to file an advice letter to implement any such interim rates after September 1, 2009.

(Great Oaks' October 19, 2009 update at p. 10.)

Great Oaks has not established any error in Resolution W-4838 on this issue. In addition, Great Oaks' allegation that DWA was "working in concert" with DRA has no factual support. Moreover, there is simply no basis to conclude that the delays Great Oaks experienced in timely filing its GRC or in filing AL 196-W were due to DWA and/or DRA. These allegations are entirely without merit.

C. Extension of mandatory water conservation, which Great Oaks had not been enforcing prior to December 2009, was in effect when Great Oaks filed its GRC.

Despite three years of drought conditions and SCVWD's March 2009 resolution mandating water conservation, Great Oaks notified its customers during the summer of 2009 that no rationing from them was required. Nevertheless, Great Oaks contends that in December 2009, the extension of the mandatory water conservation resolution necessitated Great Oaks' request to establish two memorandum accounts which it had not requested in A.09-09-001. A.09-09-001 was filed on September 3, 2009 when SCVWD Resolution 09-25 was in effect. Further, Santa Clara County, like the state of California in which it is located, had been experiencing a drought during 2009 and for the years prior. From March 2009 when SCVWD issued its initial resolution, to September 3, 2009, there was not much precipitation in Santa Clara County or elsewhere in California and the drought was continuing. In denying the request to establish the memorandum accounts, Resolution W-4838 found that Great Oaks failed to comply with D.02-08-054, Standard Practice U-27-W and Resolution W-4276.

Specifically, Resolution W-4838 determined that Great Oaks' request for the MCMA and MCRAMA did not satisfy the criteria for establishment of a memorandum account. That criteria is as follows: (1) the expense is caused by an event of an exceptional nature that is not under the utility's control; (2) the expense cannot have been reasonably foreseen in the utility's last GRC and will occur before the utility's next scheduled rate case; (3) the expense is of a substantial nature in the amount of money involved; and (4) the ratepayers will benefit by the memorandum account treatment. (See Resolution W-4838 at p. 3.) DWA determined that "the issues underlying Great Oaks' request for relief in AL 197-W are under active consideration in its current general rate case... and that ratepayers would not benefit from the requested memorandum account treatment." (Resolution W-4838 at p. 4.) In affirming those findings, Resolution W-4838 found that the mandatory conservation request was in effect on September 3, 2009, the date Great Oaks filed its GRC; and that it was foreseeable by Great Oaks as of

September 3, 2009, that the mandatory conservation resolution was not only then in effect through December, but also may be extended into 2010.

Great Oaks argues that there was no factual evidentiary support for the finding that extension of SCVWD's resolution was foreseeable by Great Oaks. It argues that in its water sales forecast, submitted in A.09-09-001, its expert testified that regardless of whether the water restrictions remain in place during the test year, if SCVWD's conservation programs are successful, "this is likely to affect the level of water use into the test year...." (Application for rehearing at p. 6, quoting from prepared testimony of Wendy Illingworth submitted in A.09-09-001.) In its application for rehearing, Great Oaks does not explain how the conservation program may be likely to affect the level of water use into the test year. In any event, Great Oaks was not abiding by the water restrictions at any point in 2009 because, as it informed its customers in the summer of 2009 and the Commission in AL 197-W, its water supply was adequate. In addition, at the time it filed its GRC application, it had never implemented any water restrictions in response to Resolution 09-25, nor otherwise heeded SCVWD's water restriction mandate; nor did it provide the Commission with any information on what it planned to do vis-à-vis the water conservation request. As Resolution W-4838 determined, Great Oaks' opportunity to act in response to SCVWD's conservation mandate was on September 3, 2009, which, for purposes of AL 197-W (filed in February 2010), was the date upon which it filed its last GRC. September 3 was "over five months after ... Resolution 09-25" had passed. (Resolution W-4838 at p. 4.) Great Oaks' argument that it could not have anticipated the extension is not reasonable. Great Oaks filed A.09-09-001 while a conservation mandate was in effect—Great Oaks anticipated that its rates to be set by A.09-09-001 would ultimately be effective as of September 1, 2009—the date the interim rates took effect, based on Great Oaks' request in AL 196-W. It was, or should have been, very clear to Great Oaks that there already existed a water conservation request that was in effect for Santa Clara County during that period. Further, given the time of year and the continuing drought, it was or should have

been foreseeable to the water utility that the water conservation resolution may be extended beyond December 2009. Great Oaks' allegation is without merit.

Great Oaks also argues that Resolution W-4838 was factually erroneous because DWA did not find that ratepayers would not benefit from the requested memorandum account treatment. It contends that the February 11, 2010 letter by DWA notifying Great Oaks of staff's rejection of AL 197-W did not find that a reason for the rejection was lack of ratepayer benefit. Finding of Fact/Conclusion of Law Number 2 on page 6 of Resolution W-4838 provided:

The Division of Water and Audits rejected Advice Letter No. 197-W on February 11, 2010, because Great Oaks Water Company did not address the criteria for establishing either of the two memorandum accounts pursuant to the Commission's requirements as outlined in Standard Practice U-27-W, D.02-08-054, and Res. W-4276.

Finding of Fact/Conclusion of Law Number 19 provided that "Great Oaks did not establish that it met the factors for establishing a memorandum account."

(Resolution W-4838 at p. 8.) Great Oaks has not established that Resolution W-4838 is factually erroneous and its allegation is without merit.

D. Great Oaks has not shown that it is similarly situated to the San Jose Water Company for purposes of memorandum account treatment.

Great Oaks takes issue with Finding of Fact/Conclusion of Law Number 18 which determined that the San Jose Water Company, which filed its last GRC in January 2009, two months before Resolution 09-25 issued in March 2009, is not similarly situated to Great Oaks in terms of establishing memorandum accounts in response to actions by SCVWD. (See Resolution W-4838 at p. 11.) Great Oaks does not explain how San Jose Water Company's filing of its GRC prior to the issuance of Resolution 09-25, is similar to Great Oaks filing its GRC in September 2009, during the sixth month that Resolution 09-25 was in effect.⁴ Rather, Great Oaks argues that because it filed AL 196-W on July

⁴ In addition, unlike the San Jose Water Company, which provides its customers with ground and surface
(footnote continued on next page)

16, 2009, requesting interim rates from July 1, 2009 through June 30, 2010, the interim rates should have been made effective as of July 1, 2009. It contends that basing Great Oaks' interim rates on the results of Great Oaks' prior GRC, as set forth in Resolution W-4594, was arbitrary. (Great Oaks application for rehearing at p. 12.) It alleges that it was arbitrary "because the Commission failed to select a methodology for establishing transition year interim rates in D.07-05-062." (Great Oaks application for rehearing at p. 12.) Great Oaks does not provide an argument as to why using the rates the Commission already determined were reasonable was arbitrary. Great Oaks also alleges that DWA acted in conjunction with DRA. DRA acted as a party in A.09-09-001. DWA is not a party but is a different branch of the Commission's staff assigned to the disposition of the proceeding. The allegation of complicity is either a misunderstanding of Commission practice and procedure or an unsupported allegation—in either case, it is without merit. Moreover, Great Oaks complains about the policy but has failed to establish that the Commission does not have the discretionary authority to determine what interim rates are justified and reasonable in the underlying proceeding. (See Pub. Util. Code §§ 451, 454.)

Further, it appears that Great Oaks is using Resolution W-4838 as a vehicle to improperly and untimely challenge D.07-05-062, as well as the September 8, 2009 authorization for interim rate relief. (Pub. Util. Code §§ 1709, 1731(b).) Great Oaks has not established that it is similarly situated to the San Jose Water Company or that Resolution W-4838 is arbitrary, and the allegations are without merit.

E. Great Oaks has not established that it was unlawfully prejudiced by the rejection of AL 197-W.

Finding of Fact/Conclusion of Law Number 20 determined that Great Oaks was not prejudiced by rejection of AL 197-W. (Resolution W-4838 at p. 8.) Further, Resolution W-4838 determined that because interim rates are in effect for Great Oaks,

(footnote continued from previous page)

waters, Great Oaks supplies its customers with ground water only.

“the ultimate resolution of the issues raised in AL 197-W can be dealt with in A.09-09-001 without concern for retroactive rate making.” (Resolution W-4838 at p. 8.) Thus, the question of reduced sales, if any, resulting from conservation will be considered in A.09-09-001. The rates that the Commission ultimately adopts in A.09-09-001 will go back to September 1, 2009, and will be reflective of the Commission’s determination of the appropriate sales forecast given the circumstances for Great Oaks.

The basic argument presented by Great Oaks in support of this issue is the same as that presented earlier regarding the September 1, 2009 effective date of the interim rates. Great Oaks argues: “[s]ince A.09-09-001 was never intended to be a rate setting process for any time period before July 1, 2010, the Commission is without the necessary data to set rates for the time period from September 1, 2009 to June 30, 2010.” (Great Oaks application for rehearing at p. 15.) As discussed above, Great Oaks appears to be improperly challenging D.07-05-062, and the challenge is without merit. Great Oaks argues that it was not “permitted to present data, other information or arguments in support of the requested memorandum accounts as part of A.09-09-001.” (Great Oaks application for rehearing at p. 15.) To the extent that Great Oaks is contesting procedures in the pending proceeding A.09-09-001, its allegations are without merit.

After review of each and every argument presented by Great Oaks, we are of the opinion that there is no merit to the allegations presented. Great Oaks’ application for rehearing of Resolution W-4838 should, therefore, be denied.

THEREFORE, IT IS ORDERED that:

1. The application for rehearing of Resolution W-4838 filed by the Great Oaks Water Company is denied.
2. The Executive Director shall mail a copy of this order to all parties on the service list for Application 10-09-008 and Application 09-09-001.
3. Application 10-09-008 is closed.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners