

Decision 05-08-041

August 25, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

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 to increase revenues by \$11,573,200 or 39.1% in 2003, \$3,078,400 or 7.3% in 2004, \$3,078,400 or 6.8% in 2005, and \$3,079,900 or 6.4% in 2006.

Application 02-11-044
(Filed November 25, 2002)

**ORDER MODIFYING AND GRANTING LIMITED REHEARING
OF DECISION (D.) 04-07-034**

I. SUMMARY

This proceeding concerns San Gabriel Valley Water Company's (San Gabriel) application for a rate increase for its Fontana Water Company Division (Fontana Division).¹ Among other things, D.04-07-034 approves a rate increase for the Fontana Division, permits San Gabriel to construct new plant as long as the costs fall within the 10% cap, finds \$2.6 million in proceeds received from the County of San Bernardino (County) have been invested in Plant F-10 and removes that amount from the rate base and requires the Commission staff to conduct an audit of certain sales and condemnation proceeds received by San Gabriel since 1996.

The City of Fontana (City), Fontana Unified School District (School District), and the Commission's Office of Ratepayer Advocates (ORA), collectively "applicants," timely applied for rehearing of D.04-07-034. Applicants contend that the

¹ San Gabriel is a Class A water utility. (A.02-11-044.) San Gabriel's previous general rate case (GRC) in the Fontana Division included Test Years 1995 and 1996 and Attrition Years 1997 and 1998.

revision to the initial proposed decision (PD) was so substantial it constituted an alternate decision within the statutory definition set forth in Public Utilities Code section 311(e),² and that it appeared for the first time on the Commission's July 7, 2004 agenda for disposition at its July 8, 2004 meeting without adequate notice to or service on the parties of the revision in violation of Commission Rules of Practice and Procedure,³ the Public Utilities Code, and applicants' due process rights. In addition, the applicants allege that the means by which the PD was revised are not based on record evidence in violation of Commission procedural rules, the Public Utilities Code and due process guarantees. Moreover, the applicants for rehearing contend that the rate increase authorized by D.04-07-034 is not supported by the record or justified under the Public Utilities Code, Commission rules and precedent. They also contend that San Gabriel did not meet its burden of proof in its initial showing and did not prove its case by clear and convincing evidence as required by Commission rules, precedent and statutory law.

In addition to the above issues, ORA also raises additional issues. ORA alleges that D.04-07-034 departs from Commission precedent by utilizing a different evidentiary standard thereby modifying prior Commission decisions in violation of the Public Utilities Code, that San Gabriel deviated from Standard Practice U-16 without justification and in violation of the Public Utilities Code, and that the decision errs in approving amortization of the utility's balancing and memorandum accounts before the results of the audit are known. Applicants also request an oral argument.

We have reviewed each and every allegation in the application and are of the opinion that there is merit to some issues presented by the applicants for rehearing and good cause exists for granting a limited rehearing of D.04-07-034 as set forth herein. However, we shall deny rehearing of D.04-07-034 on the issue of amortization of the amount of proceeds but modify the decision so that all sale and condemnation proceeds

² All statutory references are to the Public Utilities Code unless otherwise indicated.

³ Hereinafter, all references to the Commission's Rules of Practice and Procedure are to "rule" or "rules," unless otherwise indicated.

recorded in San Gabriel's balancing and memorandum accounts that are the subject of the audit ordered by D.04-07-034 are subject to tracking even if amortized and are subject to review at the next GRC for the Fontana Division. We shall also use this opportunity to correct a typographical error in D.04-07-034, which mistakenly references D.03-09-036, rather than D.93-09-036. In addition, we find that good cause does not exist for granting the City's motion for leave to file a reply to San Gabriel's response to its application for rehearing, nor for permitting San Gabriel to file a response to the City's motion for leave to file a reply. We therefore find that there is no need for an oral argument at this point.

II. BACKGROUND

In D.04-07-034, the Commission authorized the Fontana Division to increase revenues for years 2004-2006. A major component of San Gabriel's rate increase request concerns future plant construction. Therefore, in authorizing the rate increase, D.04-07-034 approves San Gabriel's proposed future plant construction program, including any substitutions or changes that may be made and imposes a rate base cap requiring San Gabriel to limit plant additions so that rate base increases are no more than 10% each year. Among other things, D.04-07-034 permits San Gabriel to purchase land for its proposed construction of a new office, garage and warehouse because a suitable location may not be available later, but defers authorization of the proposed construction of those buildings until San Gabriel provides complete justification for the new building.

D.04-07-034 also finds that the County reimbursed San Gabriel \$2.6 million for the cost of its F-10 Treatment Plant and that San Gabriel has invested that amount in Plant F-10. Accordingly, D.04-07-034 reduces rate base by \$2.6 million to reflect that reimbursement for wells built to restore production lost due to pollution from a landfill operated by the County. The remaining sales and condemnation proceeds at issue in the proceeding are to be audited by the Commission staff prior to the Fontana Division's next GRC.

III. DISCUSSION

1. Sale and Condemnation Proceeds

- a) **The revision of the Proposed Decision concerning the amount approved for ratebase reduction raises evidentiary concerns.**

Applicants contend the record does not support the \$2.6 million dollar figure discussed in the Plant F-10 Section added to the PD in June 2004.⁴ Pursuant to rule 1.2:

The Commission shall render its decision based on the evidence of record... The record is closed for the receipt of evidence after the proceeding is submitted under Rule 77,⁵ unless it is reopened under Rule 84.

The PD was modified, among other things, to single out Plant F-10 proceeds, finding the utility had been reimbursed by the County for a specific amount (\$2.6 million) of those proceeds and further that no shareholder funds were invested in the F-10 Plant so that the \$2.6 million should be treated as a Contribution in Aid of Construction and removed from ratebase. (*Id.* at 68, Conclusion of Law No. 7.) The condemnation proceeds discussed in the “Plant F-10” Section of D.04-07-034 were the results of an inverse condemnation lawsuit brought by the utility against the County arising from groundwater contamination. The contamination originated in the Mid-Valley Landfill operated by the County. (D.04-07-034 at 48.) D.04-07-034 requires San Gabriel to provide “a complete listing and description of all sale and condemnation proceeds

⁴ Finding of Fact number 18 provides that the County reimbursed San Gabriel in the amount of \$2.6 million for construction costs associated with a water treatment facility know as “Plant F-10.” Conclusion of Law number 7 removes the \$2.6 million from rate base. Finding of Fact number 19 finds that in addition to the \$2.6 million cost of the F-10 plant, the County also reimbursed the utility \$6 million in compensatory damages for contamination of its water rights. (D.04-07-034 at 67.) Conclusion of Law number 8 declares that the ratemaking treatment of that \$6 million, along with other sale and condemnation proceeds San Gabriel received from the County from 1996 onward should be deferred to its next NOI. (D.04-07-034 at 68.)

⁵ Rule 77 provides: “A proceeding shall stand submitted for decision by the Commission after the taking of evidence, and the filing of such briefs or the presentation of such oral argument as may have been prescribed by the Commission or the presiding officer.”

received from 1996 onwards with detailed accounting of any reinvestment ... in rate base, and of any other disposition of funds,” in its next NOI filing “to ensure proper distribution of these proceeds.” (*Id.*, at 47.) Because of confusion surrounding all of the sale and condemnation proceeds, D.04-07-034 orders the Commission staff to perform an audit of the utility prior to the Fontana Division’s next GRC. (*Id.* at 47-48, and at 68, Conclusion of Law No. 6.) D.04-07-034 removes \$2.6 million of the proceeds it finds were invested in Plant F-10 from the audit, and requires “the remaining \$6.0 million San Gabriel received from the County as compensation for damages to its water rights, along with other sale and condemnation proceeds San Gabriel received from 1996 onwards... be deferred to the next GRC proceeding.” (*Id.* at 47-49, and at 68, Conclusion of Law No. 8.)

Applicants for rehearing allege that D.04-07-034 bases the \$2.6 million figure on calculation errors and/or erroneous evidence. We agree, from the record, it is not clear what the \$2.6 million is based on. Therefore, we find there is merit in applicants’ allegations and order rehearing on this issue.

Applicants for rehearing also contend that the Code, Commission procedural rules and their due process rights were violated concerning two ex parte communications on June 30 regarding the revisions to the PD. Rule 7(c) concerns ex parte communications in ratemaking proceedings and provides:

(1) Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) If an ex parte communication ... call is granted by a decisionmaker to any party individually, all other parties shall be sent a notice at the time that the request is granted (which shall be no less than three days before the meeting or call), and shall be offered individual meetings of a substantially equal period of time with that decisionmaker... If the communication is by telephone, that party [requesting the call] shall provide the

decisionmaker with the certificate of service [notifying the other parties of the call] before the start of the call....

It appears that certain ex parte rules were not complied with regarding the June 30, 2004 ex parte communications as required by the Code and Commission rules. The record shows that two ex parte communications by telephone occurred on July 30 initiated by San Gabriel and involving a Commissioner and Commissioner's advisor. No other parties had advance notice of the communications or were invited to participate. Further, written notices of those ex parte communications were not filed until July 7, 2004 after the requisite filing period.

Applicants have also alleged that San Gabriel had improper access to revisions in the PD before other parties knew of the changes. However, the record shows that San Gabriel and the other parties had equal ability to view revisions made to the PD and published on the Commission's website on June 29. In addition, applicants have alleged that comments San Gabriel made on the June 24, 2004 Alternate Decision (AD) on July 1, 2004 were in part based on improper knowledge of revisions made to the PD. However, applicants have not show this, because San Gabriel's comments are likely a response to the revisions made to the PD and posted on our website on June 29. Therefore applicants, like San Gabriel, did have an opportunity to view modifications to the PD on our website on June 29 and, like San Gabriel, could have filed comments on July 1 concerning those revisions, regardless of the June 30 ex parte communications. Most importantly, the due process rights of applicants for rehearing are protected by affording them the opportunity to bring issues such as this to our attention through the rehearing process. Accordingly, applicants have not established that their due process rights were violated by the June 30 ex parte communications.

Applicants also contend that the \$2.6 million modifications to the PD were substantive and materially changed the outcome so as to constitute an AD. In addition, applicants argue that they did not have adequate knowledge of, were not served with and

did not have the requisite opportunity to comment on what they alleged was a materially altered PD in violation of the Code, Commission rules and their due process rights.

Because we believe rehearing is warranted on the issue of the \$2.6 million in rate base reduction ordered by D.04-07-034 and the conclusion that there is \$6 million remaining in proceeds received by San Gabriel for the Plant F-10, there is no need to further discuss the points raised by applicants. The applicants for rehearing have established that D.04-07-034 errs with respect to the modification made to the PD and as discussed above, we shall order a limited rehearing of D.04-07-034 regarding the proceeds was invested in Plant F-10.

b) D.04-07-034 should be modified so that amortization of the utility's balancing and memorandum accounts concerning sale and condemnation proceeds occurs after completion of the audit.

D.04-07-034 permits San Gabriel to “record in the water quality memorandum account any reimbursement from polluters or government funding proceeds ultimately received, so these proceeds can be used to reduce rates, despite the ordered audit.” (D.04-07-034 at 62, and at 67, Finding of Fact No. 24, and at 69, Conclusion of Law No. 9.) Applicant ORA contends that D.04-07-034, Ordering Paragraph No. 12 authorizes San Gabriel to amortize through rates all existing balances in balancing and memorandum accounts, which would include the aforementioned water quality memorandum account. Because the Commission will not have complete information regarding the sales and condemnation proceeds until the audit ordered by D.04-07-034, is completed, we cannot know before then whether the amounts D.04-07-034 permits San Gabriel to amortize from that account are just and reasonable, as required by section 454.

ORA contends that D.04-07-034 should be modified so that all sale and condemnation proceeds recorded in the utility's balancing and memorandum accounts that are a subject of the audit ordered by D.04-07-034 are amortized after the conclusion of the staff audit. ORA further argues the amortization should occur after the

Commission makes a finding regarding the reasonableness of those amounts—presumably in the Fontana Division’s next GRC, or in the alternative, that the amounts be made subject to refund. A memorandum account enables us to track the funds. Therefore, we shall modify D.04-07-034 to clarify that all funds in a memorandum account subject to the audit are subject to tracking even if amortized and are subject to review at the next GRC for the Fontana Division.

2. San Gabriel failed to meet its requisite burden of proof with respect to its rate request.

The applicants contend that San Gabriel failed to meet the burden of proof required by Commission precedent and by section 454 regarding its entire rate request, thereby violating that provision, as well as section 451, which requires that all rates be just and reasonable.⁶ Section 454(a) requires a public utility to show and the Commission to find that its request for a rate increase is justified. In rate cases, the utility has the burden of proving by “clear and convincing evidence, the reasonableness of all the expenses it seeks to have reflected in rate adjustments.” (*Re Southern California Edison Company* (1983) 11 Cal.P.U.C.2d 474, 475 (D.83-05-036).)⁷ Unless the utility meets that burden, “those costs will be disallowed. [Citation omitted.]” (*Re Southern California Edison Company, supra*, 11 Cal.P.U.C.2d at 475.)

In *Re Southern California Edison Company, supra*, 11 Cal.P.U.C.2d 474 (D. 83-05-036), we clarified and reaffirmed its rule with respect to the burden of proof in

⁶ “Burden of proof” means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact... The burden of proof may require a party to ... establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing evidence, or by proof beyond a reasonable doubt....” (Evid. Code § 115.) Burden of producing evidence “means the obligation of a part to introduce evidence sufficient to avoid a ruling against him on the issue.” (Evid. Code § 110.)

⁷ The “clear and convincing evidence” standard is an intermediate one, between proof by a preponderance of evidence and proof beyond a reasonable doubt. “[C]lear and convincing evidence demonstrates ‘a high probability of truth of the facts for which it is offered as proof’....” (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

reasonableness review proceedings. (11 Cal.P.U.C.2d at 475.) Citing from *Re OII No. 56* (1980) 4 Cal.P.U.C.2d 693, 701 (D.82486), the Commission stated:

...[T]he burden of proof is on the utility applicant to establish the reasonableness of ... expenses sought to be recovered We expect an affirmative showing by each utility with percipient witnesses in support of all elements of its application.... (*Re Southern California Edison Company, supra*, 11 Cal.P.U.C.2d at 475.)

Recently, we reaffirmed that in a general rate proceeding, a utility must prove its case “by evidence that is clear, explicit and unequivocal; that is so clear as to leave no substantial doubt’ or that is sufficiently strong to demand the unhesitating assent of every reasonable mind. [Citation]” (*Re Application of Southwest Gas Corporation* (2004) ___ Cal.P.U.C.2d ___, D.04-03-034 at 6.) Thus, even if a counterpoint is raised by another party, the utility “must first justify the reasonableness of its position.” (*Id.*, at 7.) Further, we stated: “... it is ...[the utility’s] direct showing that must provide the clear and convincing evidence.⁸ Without establishing that basis, ... [the utility] will not have met its burden of proof.” (*Id.* at 7-8, and at 94-95, Conclusions of Law No. 2-5, emphasis added.)

Re Schedule for Processing Rate Case Applications by Water Utilities (1990) 37 Cal.P.U.C.2d 175 (D.90-08-045), sets forth the documentation a water utility must present at the time it files its Notice of Intent (NOI). (37 Cal.P.U.C.2d at 190-191.) If a water utility fails to comply with the various requirements set forth in D.90-08-045, the NOI “shall not be accepted for filing.” (*Id.*) Upon receipt of a deficiency letter, a utility has ten days to correct the unresolved deficiencies. (*Id.*) D.04-07-034 recounts the problems with the NOI filing and the application filing in this proceeding.

At pages 49 through 51 and 65, D.04-07-034 explicitly states that San Gabriel failed to prove its case in its direct showing and failed to support its request with

⁸ Citing from D.00-02-046, the Commission stated: “to meet the burden of presenting clear and convincing evidence of the need for an increase the applicant must produce evidence having the greatest probative value. [Citation.]” (D.04-03-034 at 7.)

clear and convincing evidence. In addition, D.04-07-037 approves all of the items in San Gabriel's list of proposed construction (Exhibit 54) and also permits San Gabriel to change or substitute any or all of them. As a result, the Commission does not know which, if any, of the items listed in Exhibit 54 will be constructed. Therefore, by finding that all of the items listed in Exhibit 54, as well as any unknown "changes and substitutions" to Exhibit 54 are just and reasonable, provided they do not exceed the 10% rate cap, D.04-07-034 "pre-approves" unknown projects. This undermines Finding of Fact No. 8⁹ by casting doubt on whether the plant additions ultimately constructed are "needed," since we do not know at the time D.04-07-034 was issued what the substitutions or changes may consist of. For these reasons we erred in concluding that the proposed construction is justified as required by sections 454 and 451.

In addition to major plant additions, other expenses were approved by D.04-07-034 as part of its request for a rate increase. D.04-07-034 found that San Gabriel did not meet its burden of proof and "supplemented, updated, or replaced" its original application "by rebuttal testimony" (D.04-07-034 at 49 and 64), and applicants contend the award of the rate increase conflicts with applicable Commission cases, discussed *supra*, that provide that a utility has the burden of proving its case on its initial showing by clear and convincing evidence.¹⁰ San Gabriel's application did not comply with the requirements of D.90-08-045 and D.04-07-034 did not find any exceptions to the rule set forth in D.90-08-045 applied here. In *Re San Diego Gas and Electric Company* (1992) 46 Cal.P.U.C.2d 538 (D.92-12-019), SDG&E failed to make an initial showing that sufficiently described, explained and justified its requested revenue requirement. (46 Cal.P.U.C.2d at 555.) The Commission stated:

⁹ Finding of Fact No. 8, provides that "San Gabriel has justified its proposed construction program including plans for needed plant additions that would increase its rate base at a rate of 10% per year." (D.04-07-034 at 65, Finding of Fact No. 8.)

¹⁰ This is particularly the case in a contested proceeding such as the instant one.

The purpose of a general rate case is to develop and adopt sound, informed estimates of the reasonable costs to be incurred in the test year. We know that our adopted levels of revenues and expenses may be at variance with actual experience. However, we must be sufficiently informed to know that adopting a given estimate makes sense. (*Id.*)

Although we found that SDG&E's initial showing failed, and that its strategy of not proving relevant information in its initial showing was unacceptable, we approved the all-party settlement. (*Id.*, and at 764, footnotes 16 and 17.) Nonetheless, the Commission stated: "Where a rate case is litigated or a settlement is contested, the utility must provide a more detailed showing for all or its requested revenue requirement, in order to sustain its burden of proof." (*Id.* at 764, footnote 17.)

In this proceeding the record shows that San Gabriel's failure to sustain its initial showing was neither inadvertent nor procedural. D.04-07-034 did not find any special circumstances justifying San Gabriel's failure. Under sections 454 and 451 the increase is not justified. For the reasons discussed above, good cause exists for granting a rehearing of D.04-07-034 on this question.

3. D.04-07-034 does not comply with Commission rules regarding Standard Practice U-16.

ORA challenges the method of computing working cash approved by D.04-07-034, contending it improperly modifies in *Re Pacific Gas and Electric Company* (1995) 63 Cal.P.U.C.2d 570 (D.95-12-055), as well as *Re San Gabriel Water Company* (1995) 60 Cal.P.U.C.2d 294 (D.95-06-017) in violation of section 1708,¹¹ and that D.04-07-034 improperly permits San Gabriel to use a method that does not comply with the Commission's requirements. "The Commission follows its Standard Practice U-16 guidelines for purposes of ratemaking unless the utility can demonstrate a special

¹¹ Section 1708 provides in part: "The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it."

circumstance which warrants a deviation.” (63 Cal.P.U.C.2d at 632, Finding of Fact No. 89.)

Re San Gabriel Water Company, supra, 60 Cal.P.U.C.2d 294, concerned the Fontana Division’s GRC for test years 1995 and 1996 and attrition years 1997 and 1998. Pursuant to Paragraph 7.03 of the settlement entered into by San Gabriel, the City of Fontana and the Division of Ratepayer Advocates,¹² and approved by D.95-06-017:

The Parties agree that the amount of Working Cash to be included in rate base should be calculated according to the Commission’s Standard Practice U-16, Determination of Working Cash Allowance, and based on the adopted revenues and expenses in this proceeding. (60 Cal.P.U.C.2d at 299.)

The above language clearly states that under the agreement working cash is to be calculated according to Standard Practice U-16; however, it further provides that it is also to be based on the adopted revenues and expenses in the 1995 GRC. Thus, it may be interpreted as being in effect only for that proceeding, and does not necessarily apply in this.

Re Pacific Gas and Electric Company, supra (D.95-12-055), articulates the Commission’s position regarding Standard Practice U-16. (See also, *Order Instituting Rulemaking and Investigation on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon* (2004) ___ Cal.P.U.C.3d ___ (D.04-09-061) 2004 Cal.PUC LEXIS 477 *85.) In *Re Pacific Gas and Electric Company, supra* (D.95-12-055), the Commission found that although its Standard Practice U-16 “... are not rules which the utilities must follow;” they are nonetheless rules the Commission follows in developing rates, and a utility that chooses not to follow them must demonstrate “special circumstances” warranting a deviation. (*Re Pacific Gas*

¹² ORA’s predecessor.

and Electric Company, supra, 63 Cal.P.U.C.2d at 617.)¹³ In that proceeding PG&E did not demonstrate a special circumstance for deviating from Standard Practice U-16. (*Id.* Finding of Fact No. 90.) Pursuant to *Re Pacific Gas and Electric Company, supra* (D.95-12-055), San Gabriel should either have followed Standard Practice U-16 or demonstrated a special circumstance necessitating its deviation from that requirement. It did neither. By approving San Gabriel's methodology without finding special circumstances necessitating a deviation, D.04-07-034 does not follow Commission procedure regarding Standard Practice U-16. Accordingly, good cause exists for granting a rehearing on this issue.

We have reviewed each and every allegation of error raised by the applicants for rehearing and are of the opinion that there is merit to the issues concerning Standard Practice U-16, as well as whether San Gabriel met its burden of proof regarding its rate increase request, whether its proposed construction projects are needed, reasonable and justified, whether there is record evidence supporting the finding that \$2.6 million in proceeds were invested in Plant F-10 and whether those proceeds should be subject to the audit ordered by D.04-07-034.

In addition for all of the foregoing reasons we shall modify Ordering Paragraph No. 12 of D.04-07-034 as set forth in Ordering Paragraph No. 5 herein. D.04-07-034 is also modified to correct the clerical error in Finding of Fact No. 23 by deleting the reference to D.03-09-036 and replacing it with D.93-09-036.

Therefore, **IT IS ORDERED**, that:

1. The applications of City of Fontana, Fontana Unified School District, and the Commission's Office of Ratepayer Advocates for rehearing of Decision 04-07-034 are granted in part and a limited rehearing of Decision 04-07-034, in accordance with this order, is ordered.

¹³ "The Commission follows its Standard Practice U-16 guidelines for purposes of ratemaking unless the utility can demonstrate a special circumstance which warrants a deviation." (63 Cal.P.U.C.2d at 632, Finding of Fact No. 89.)

2. The limited rehearing herein ordered shall concern: a) whether San Gabriel has met its burden of proof regarding its request for a rate increase and if not, whether there are special circumstances warranting an exception in this case, b) whether San Gabriel's proposed construction projects, including any changes or substitutions, are needed, reasonable and justified, c) whether there is evidence of record supporting the finding that \$2.6 million in proceeds received from the County of San Bernardino were invested in the F-10 Plant and whether proceeds invested in Plant F-10 should also be subject to the audit ordered by Decision 04-07-034 in order to determine precisely what amount were invested in the F-10 Plant and should be removed from ratebase, and 4) whether there are special circumstances warranting San Gabriel's deviation from Standard Practice U-16, concerning working cash.

3. The limited rehearing ordered herein shall be consolidated with San Gabriel's next General Rate Case for its Fontana Division, scheduled to be filed in July 2005.

4. Pending the outcome of the rehearing San Gabriel may continue to bill and collect the rates ordered in Decision 04-07-034 subject to adjustment. The rates shall be placed in a memorandum account subject to tracking.

5. Ordering Paragraph No. 12 of Decision 04-07-034 is modified to provide: "San Gabriel may amortize through rates all existing balances in its balancing and memorandum accounts, as detailed in today's decision. Funds in such accounts are subject to tracking and may be subject to refund pending reasonableness review consistent with established Commission policy, and may be subject to refund."

6. The reference to "D.03-09-036" in Finding of Fact No. 23 of Decision 04-07-034 is deleted and "D.93-09-036" is added in its place.

7. The requests of City of Fontana and the Commission's Office of Ratepayer Advocates for oral argument are denied.

8. The motion of the City of Fontana to file a reply to San Gabriel's response is denied and its reply is rejected.

9. San Gabriel's response to the motion of the City of Fontana to file a reply is rejected.

This order is effective today.

Dated August 25, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners