

WATER/RSK/SRW/jlj

Decision 08-01-020 January 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Golden State Water Company (U133W) for an order authorizing it to increase rates for water service by \$14,926,200 or 15.77% in 2007; by \$4,476,000 or 4.31% in 2008; and by \$6,909,300 or 6.02% in 2009 in its Region II Service Area.

Application 06-02-023
(Filed February 14, 2006)

ORDER TO SHOW CAUSE ON WHY THE COMMISSION SHOULD NOT FINE GOLDEN STATE WATER COMPANY \$50,000

Summary

Today we initiate an Order to Show Cause against Golden State Water Company (GSWC). In Decision (D.) 07-11-037, issued November 16, 2007, we stated our intent to fine GSWC \$50,000 for its conduct in Application (A.) 06-02-023 for waiting until it served its rebuttal testimony to provide the rationale for requesting at least half of the twenty new general office positions. We directed the Division of Water and Audits to issue an Order to Show Cause (“OSC”) within 60 days of the effective date of D.07-11-037 on why GSWC should not be fined \$50,000 for its conduct in this proceeding. This proceeding is reopened for the purpose of adjudicating this order to show cause.

Background

Public Utilities Code Section 454 requires utilities to demonstrate to the Commission that any proposed new rates are justified. The burden is on the utility to establish the reasonableness of the proposed new rates. 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* 11 CPUC 2d 474, 475 (D.83-05-036). It is the fundamental principle of public utility regulation that “the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the Commission, its staff or any interested party . . . to prove the contrary.” (*Id.*)

We have stated 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.” (*Re San Gabriel Valley Water Company* (2005) __ CPUC 3d __, D.05-08-041 at 9 citing *Re Application of Southwest Gas Corporation* (2004) __ CPUC 3d __, D.04-03-034.)

Utilities cannot wait until rebuttal testimony to present salient information supporting its rate request. (*Re San Diego Gas and Electric Company*, 46 CPUC 2d 538, 764, n. 17. (D.04-07- 022).) A utilities’ direct showing must provide the clear and convincing evidence. (*Re Application of Southwest Gas Corporation* __ CPUC 3d __, D.04-03-034 at 7-8.) As we have stated in the past:

[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*, 11 CPUC 2d, 474, 475 (D.83-05-036).

As we have reaffirmed in more recent decisions, it is the utility’s “direct showing [that] must provide the clear and convincing evidence. Without establishing that basis . . . [the utility] will not have met its burden of proof.” (*Re San Gabriel Valley Water Company* (2005) __ CPUC 3d __ D.05-08-041 at 7-8 citing *Re Application of Southwest Gas Corporation* (2004) __ CPUC 3d __, D.04-03-034.)

Waiver of Comment Period

Pursuant to Rule 14.7(a)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

John Bohn is the assigned Commissioner and A. Kirk McKenzie is the assigned Administrative Law Judge in this proceeding.

ORDER TO SHOW CAUSE

Based upon the record established in A.06-02-023 there is good cause to find that GSWC has violated prior Commission orders and directions requiring it to provide clear and convincing evidence in its direct showing to support its rate request. We have previously admonished GSWC for waiting until rebuttal testimony to present salient information supporting its rate request. In D.04-03-039, we warned Southern California Water Company ("SCWC"), GSWC's former name, against using such tactics:

With the application, SCWC submitted testimony, which included a very brief description of the need for this particular project...Providing the basic justification in rebuttal is unfair, since parties are not generally given the opportunity to respond to rebuttal with testimony of their own... When the utility has the evidentiary burden, we caution against the use of rebuttal testimony to provide the basic justification. (*Re Southern California Water Company*, ___ CPUC 3d ___ D.04-03-039, at 84-85.)

Even though we have previously warned GSWC that it has the burden of justifying its rate request and that it must do so in its direct testimony, GSWC has again waited until its rebuttal testimony to provide basic justification for its rate request. In A.06-02-023, about two weeks before hearings were schedule to begin, GSWC served over 200 pages of rebuttal testimony supporting its request for new general office positions. GSWC also served 1,000 pages and four CD-ROMs of responses to data requests concerning the rebuttal testimony just two days before hearings.

By withholding much of the detailed justification for the new position until rebuttal testimony, GSWC unfairly handicapped DRA in the preparation of its report and in its cross-

examination of GSWC witnesses. Moreover, in its rebuttal, GSWC made it clear that it does not take its burden to justify its case in direct testimony seriously. Despite being previously admonished by the Commission regarding this behavior, GSWC once again waited until it submitted its rebuttal testimony to proffer the principal justification for new general office positions.

We order GSWC to appear and show cause why the Commission should not fine GSWC \$50,000 for waiting until it submitted its rebuttal testimony to provide the rationale for at least half of the twenty new general office positions.

Pursuant to Public Utilities Code Sections 2107 and 2108, we may impose penalties in the amount of \$500 to \$20,000 per day per offense for violations of any order, decision, decree, rule, direction demand, or requirement of the Commission. We find that GSWC improperly waited until it submitted its rebuttal testimony to provide its justification with respect to at least half of the general office positions at issue. Pursuant to Sections 2107 and 2108, each of these ten positions is considered a separate offense.

In D.07-11-037 we discuss our rationale for setting GSWC's fine at \$50,000. We stated that GSWC has not taken any responsibility for its conduct in this case nor did it take any steps to rectify the harm it caused. We found that GSWC's failure to comply with D.04-03-039 and its repeated conduct merits a higher fine.

Therefore, **IT IS ORDERED** that:

1. Respondent GSWC is directed to appear at a time and place to be determined and show cause why the Commission should not fine GSWC \$50,000 for waiting until its rebuttal submission to present salient information regarding its request for additional general office positions. Pursuant to Sections 2107 and 2108, the Commission may impose penalties in the amount of \$500 to \$20,000 per day per offense for GSWC's conduct in Application 06-02-023.

2. After an Administrative Law Judge ("ALJ") is assigned, a Prehearing Conference pursuant to Rule 7.2 will be convened, and the ALJ will calendar a date, time, and location for a hearing on the Order Showing Cause in a subsequent ruling or order. The subsequent

ruling will set a schedule for the issuance of prepared testimony and any additional discovery matters. GSWC shall serve prepared testimony responding to the issues stated above and any other allegations presented in this Order Showing Cause.

3. This ordering paragraph suffices for the "preliminary scoping memo" required by Commission Rule 7.3 of the Commission's Rules of Practice and Procedure. This phase of Application (A.) 06-02-023 is categorized as an adjudicatory proceeding and will be set for evidentiary hearing. The issues of this phase of the proceeding are framed in the above order. A prehearing conference shall be scheduled for the purpose of setting a schedule for this phase of the proceeding, including dates for written testimony, determining which witnesses will need to testify, and addressing discovery issues. As to categorization of this phase of the proceeding, this order is appealable pursuant to Rule 7.6.

4. The Executive Director of the Commission is directed to cause a certified copy of this Order to Show Cause to the Golden State Water Company's offices at 630 East Foothill Boulevard, San Dimas, California 91773.

5. Proceeding A.06-02-023 is reopened for the Commission's consideration of the Order to Show Cause.

This order is effective today.

Dated January 10, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners