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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION NO. W-4771
July 9, 2009

R E S O L U T I O N

(RES. W-4771), FRUITRIDGE VISTA WATER COMPANY, (FVWC). ORDER AUTHORIZING A SURCHARGE TO RECOVER AN INCREASE IN WATER QUALITY EXPENSES PRODUCING AN INCREASE IN ANNUAL REVENUE OF $13,538.21 OR 1%.

SUMMARY

By Advice Letter (AL) 90, filed on December 23, 2008, FVWC requests a one-time surcharge be instituted of $2.99 to each customer's bill to its Schedules 1, General Metered Service, and 2, Flat Rate Service. The increase requested is to recover water compliance costs incurred in 2007 over and above the amount allowed in FVWC's last general rate case. This increase will not result in a rate of return greater than that last authorized for FVWC.

This resolution hereby grants FVWC the authority to recover in rates the $13,538.21 in California Department of Public Health (CDPH) (formerly Department of Health Services) fees by adding a one-time surcharge of $2.99 to each customer's bill.

BACKGROUND

FVWC, a Class B utility, provides water service to 4530 customers in the unincorporated areas known as Fruitridge Vista Units, Sandra Heights, Pacific Terrace Units, Bowling Green Units, and all immediately adjoining territory in Sacramento County adjacent to the southerly limits of the City of Sacramento. FVWC requests authority under General Order 96-B, Rule 7.6.2 and Water Industry Rule 7.3.3(7) and Section 454 of the Public Utilities Code to recover $13,538.21 or 1% of gross annual revenues from CDPH fees through a one-time surcharge. The surcharge will recover water quality costs including testing, sampling, and compliance for the years 2007. FVWC's present rates became effective on July 15, 2008, per Res. W-4696 which authorized a Rate Base Offset increase through AL 85. FVWC's last general rate increase was granted pursuant to Res. W-4252, dated June 14, 2001.

NOTICE AND PROTESTS

Notice of the proposed rate increase was sent to customers with the advice letter filing. There were no contacts from the customers concerning the proposed offset increase.

DISCUSSION

On March 6, 2002, we approved Res. W-4327, (superseding Res. W-4013) which authorized the establishment of a memorandum account for the CDPH fees that were being billed under Section 116565(a) of the California Health and Safety Code and water testing costs mandated by the CDPH for Water Quality. The resolution authorized Class B, C, and D Water Utilities to establish two memorandum accounts to track water quality expenses, the first – a Water Quality Memorandum Account (WQMA) and the second – a User Fee Memorandum Account (UFMA) to track CDPH fees not presently included in their rates. The memorandum accounts remained open until January 1, 2008 when they were terminated by provision of Res. W-4327. On July 31, 2008, we approved Res. W-4698 (superseding Res. W-4327) which authorized the establishing of Water Quality and User Fee Balancing Accounts. The change from memorandum accounts to balancing accounts better reflects the similarity to purchased water, purchased power, and pump tax balancing accounts approved for recovery without an earnings test by Decision (D.) 06-04-037, April 13, 2006. As a result, there was a seven-month period when there was no accounting mechanism available for booking charges from CDPH.

FVWC established the UFMA as authorized in Res. W-4327, and elected to record therein $13,538.21 representing water compliance costs with CDPH incurred in 2007and paid to CDPH. The invoice amount of $13,538.21 covered the period from July 1, 2007 through December 31, 2007, and was invoiced March 28, 2008 and paid June 9, 2008. A utility is able to seek recovery CDPH fees once it incurs the CDPH charges, i.e., receives an invoice from CDPH. The invoice was received during the period when the UFMA, as authorized in Res. W-4327, had lapsed. As such, the UFMA did not exist in which to book this invoice. A later invoice of $24,360.85 covering the period January 1, 2008 through June 30, 2008 and was invoiced September 30, 2008. This invoice was properly booked to the User Fee Balancing Account as authorized by Res. W-4698, effective July 31, 2008. The charge in the September 30, 2008 invoice was authorized to be recovered in rates via approval of AL 89-A, a Tier 1 filing, and effective October 30, 2008.

The issue before the Commission in this resolution is whether the earlier invoice that was received during the period when the UFMA had lapsed is eligible for recovery in rates. As noted in the discussion of D.08-02-036, dated February 28, 2008, in regards to the Commission's opinion on memorandum accounts:

> "In establishing memorandum accounts to record expenses not anticipated in the utility's last General Rate Case (GRC), we have permitted expenses incurred after the order authorizing the memorandum account was adopted to be recorded. It is a well established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum account or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking. (emphasis in original), D.92-03-094, 43 CPUC 2d 596, 600."

The Division of Water and Audits (DWA) consulted with the Commission's Legal Division regarding the disposition of AL 90. DWA recommends a limited exemption for recovery of the March 28, 2008 invoice.

The issue of recovery of CDPH charges is not a general rate making matter. Rather, it deals with recovery of a discreet expense item independent of the Commission's general rate-making responsibilities. As we discussed in D.09-06-053, the statutory prohibition on retroactive ratemaking (Pub. Util. Code, § 728) does not apply to recovery of limited and specific costs previously incurred, where the Commission is not engaging in general ratemaking. Further, the Commission's policy has been, and continues to be, to allow utilities to recover CDPH charges in rates. The sunset date for the WQMA and UFMA created by Res. W-4327 has been resolved on a going-forward basis by the establishment of balancing accounts pursuant to Res. W-4698. However, there was a seven-month period in which neither a memorandum nor balancing account was in existence to book the March 28, 2008 invoice. Given the unique nature of the regulatory gap created by the sunset of the UFMA in Res. W-4327, we will allow the March 28, 2008 invoice to be collected in rates. This exception is granted so as not to penalize FVWC for the regulatory gap created by the sunset of the UFMA. This exception is also consistent with our past and ongoing policy to allow recovery of these CDPH expenses. Finally, the exception being granted here is of a limited nature that will not recur in the future given the User Fee Balancing Account authorized in Res. W-4698.

Staff reviewed the invoices and determined that the charges were reasonable. FVWC proposes to pass on to their customers the operating costs from CDPH, as authorized by Assembly Bill 2995 in Section 116590(c) to the California Health and Safety Code, by assessing a one-time surcharge of $2.99 per customer. For an average customer who uses 3,500 cubic feet (35 Ccf) of water per month with a 3/4-inch meter, the surcharge

will result in a one month bill increase from $33.02 to $36.01 or 9%. DWA has reviewed the utility's request and finds it to be reasonable and recommends that it be authorized.

FVWC's recorded earnings for the year 2008 show that utility is not over-earning its authorized rate of return of 11% based on its 2008 annual report. DWA recommends that FVWC be authorized to assess a one-time surcharge of $2.99 per customer.

COMPLIANCE

FVWC has no outstanding compliance orders. There are no Commission orders requiring system improvements. The utility has been filing annual reports as required.

COMMENTS

This is an uncontested matter in which the decision grants the relief requested. This proceeding is subject to the public review and notice comment exclusion pursuant to Public Utilities Code 311(g) (3).

FINDINGS AND CONCLUSIONS

1. Fruitridge Vista Water Company filed Advice Letter 90 requesting a surcharge to recover California Department of Public Health fees incurred during 2007 pursuant to Section 116565(a) of the Health and Safety Code.

2. The undercollections in California Department of Public Health fees represent 1% of gross revenues for Fruitridge Vista Water Company.

3. The surcharge herein would allow Fruitridge Vista Water Company to recover in rates the $13,538.21 in California Department of Public Health fees.

4. The collection of California Department of Public Health fees is not general ratemaking subject to the statutory prohibition on retroactive ratemaking.

5. Section 116590(c) of the Health and Safety Code permits Fruitridge Vista Water Company to collect a fee from its customers to recover the California Department of Public Health fees paid pursuant to Section 16565(a).

6. The Commission's policy has been, and continues to be, to allow utilities to recover California Department of Public Health charges in rates.

7. It is proper for Fruitridge Vista Water Company to assess a one-time surcharge of $2.99 per customer to recover the Department of Public Health fees in rates.

8. The Commission finds that, after investigation by the Division of Water and Audits, the request is justified, and the resulting rate is just and reasonable.

9. This is an uncontested matter subject to the public notice comment exclusion provided in the Public Utilities Code Section 311 (g) (3).

THEREFORE IT IS ORDERED THAT:

1. Fruitridge Vista Water Company is authorized five days after the effective date herein, to make effective revised Schedules 1, General Metered Service, and 2, Flat Rate Service, attached to Advice Letter 90, and to cancel the corresponding presently effective rate schedules.

2. Fruitridge Vista Water Company is directed to maintain a balancing account as required by Public Utilities Code Section 792.5.

3. 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 July 9, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
Paul Clanon
Executive Director

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