

**WATER/RSK/JB5:jrb**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**DIVISION OF WATER AND AUDITS  
Water and Sewer Advisory Branch**

**RESOLUTION NO. W-4838  
August 12, 2010**

**R E S O L U T I O N**

**(RES. W-4838) GREAT OAKS WATER COMPANY (GREAT OAKS).  
ORDER AFFIRMING THE DIVISION OF WATER AND AUDITS'  
(DWA) DISPOSITION DENYING AUTHORITY TO ESTABLISH  
TWO MEMORANDUM ACCOUNTS: 1) MANDATORY  
CONSERVATION MEMORANDUM ACCOUNT, AND  
2) MANDATORY CONSERVATION REVENUE ADJUSTMENT  
MEMORANDUM ACCOUNT.**

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**SUMMARY**

By Advice Letter (AL) 197-W, filed on February 2, 2010, Great Oaks seeks authority to establish two memorandum accounts. The first is a Mandatory Conservation Memorandum Account to track operational and administrative costs associated with implementing voluntary water conservation programs and practices. The second is a Mandatory Conservation Revenue Adjustment Memorandum Account for tracking the revenue impact on sales occurring during times when a governmental agency requires mandatory water conservation practices. On February 11, 2010, the Division of Water and Audits issued a letter rejecting AL 197-W on grounds that Great Oaks failed to address the criteria for establishing either of the two requested memorandum accounts. On February 19, 2010, Great Oaks requested Commission review of the DWA's rejection of AL 197-W. We affirm the DWA's rejection of AL 197-W.

**NOTICE AND PROTEST**

In accordance with Section 4.3 of General Order (G.O.) 96-B, AL 197-W was sent to Great Oaks' G.O. 96-B service list attached to AL 197-W. The Division of Ratepayer Advocates (DRA) timely protested AL 197-W on February 22, 2010. DRA argues that Great Oaks' request does not meet the Commission's four-prong test for establishing memorandum accounts. Great Oaks filed a timely response to DRA's protest on February 26, 2010 wherein it argues that its request does meet the Commission's four-prong test. Both parties also disagree as to whether or not the relief requested in AL 197-W is being addressed in Great Oaks current general rate case, Application (A.) 09-09-001.

## **BACKGROUND**

In response to a third-consecutive year of drought and a water shortage, The Santa Clara Valley Water District (District) unanimously passed Resolution 09-25 on March 24, 2009 calling for “15 percent mandatory water conservation for the remainder of 2009.” The District is responsible for managing the overall water supply in Santa Clara County but has limited authority to mandate water use reductions. The District must rely on the actions of the water retailers, cities, and county to enact and implement local ordinances, and conservation measures. Resolution 09-25 resolves that the District “urges all cities, the county, and water retailers to immediately activate and enforce existing drought ordinances, mandatory water use restrictions and prohibitions, and/or mandatory allocations and conservation pricing.”

On December 8, 2009, the District passed Resolution 09-82 extending 15 percent mandatory water conservation through June 30, 2010. Resolution 09-82 contains the same statements of resolve as found in Resolution 09-25 with the exception that the call for 15 percent water conservation is extended from December 31, 2009 to June 30, 2010. In the Board Agenda Memo accompanying Resolution 09-82 supporting the extension of Resolution 09-25, it states,

The District’s response to annual water shortages usually occurs in late Spring when information becomes available and more reliable about water supply conditions related to imported water allocations, Delta export restrictions, operations, and local supply yields. A time extension of the conservation resolution until late spring would align with a more complete picture of the 2010 water supply outlook and annual water supply decision making.

In AL 197-W, Great Oaks states that its groundwater supply is “currently adequate for its customer use.” (Advice Letter 197-W at p. 2) Though Great Oaks has adequate water supplies, AL 197-W states that “Great Oaks is expected locally to encourage . . . compliance with the District’s mandatory conservation request.” (Advice Letter 197-W at p. 2) In the summer of 2009, Great Oaks issued its Annual Water Quality Report.<sup>1</sup> In its response to the District’s call for 15 percent mandatory rationing, the report includes as part of “A Message from the CEO” to its customers the following,

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<sup>1</sup> Title 22, Article 20 California Code of Regulations, *Related to Drinking Water*, Section 64480(a) provides that annual water quality reports are to be delivered to customers annually by July 1.

#### DROUGHT CONCERNS

In the last several months, we have all heard about potential water shortages in California. This is a situation created primarily by environmental concerns related to the San Francisco Bay-Delta. In Santa Clara County, it is surface water in reservoirs that is in short supply. Customers of Great Oaks are fortunate to have water supplied from bountiful underground aquifers.

In the context of AL 197-W, Great Oaks has not documented what actions it has undertaken or plans to undertake to locally encourage compliance with the District's mandatory conservation request.

Great Oaks filed its current general rate case, A.09-09-001, on September 1, 2009. Prior to filing A.09-09-001, Great Oaks filed AL 196-W (as supplemented) on July 16, 2009 for interim rates. Authorization to file for interim rates is outlined in the Commission's Rate Case Plan attached as Appendix A to D.07-05-062. A water utility, such as Great Oaks, "that experiences a delay beyond three-years in filing a general rate case application due to the transition to the Rate Case Plan schedule may seek to implement an interim rate change via an advice letter." (D.07-05-062, Appendix A, Section II.B) The interim rates are subject to refund and are to 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 the general rate case scheduled under the Rate Case Plan. Great Oaks' interim rates are effective September 1, 2009.

#### **DISCUSSION**

We affirm the Division of Water and Audits' determination that Great Oaks' request for a Mandatory Conservation Memorandum Account and a Mandatory Conservation Revenue Adjustment Memorandum Account does not satisfy the criteria for establishment of a memorandum account as provided for in Standard Practice U-27-W, D.02-08-054, and Res. W-4276. In reaching this determination, we consider the factors outlined in Res. W-4276, the Commission described that memorandum accounts are appropriate when the following conditions exist:

- The expense is caused by an event of an exceptional nature that is not under the utility's control,
- The expense cannot have been reasonably foreseen in the utility's last GRC and will occur before the utility's next scheduled rate case,
- The expense is of a substantial nature in the amount of money involved, and
- The ratepayers will benefit by the memorandum account treatment.

When the Commission has applied these factors, it has not always applied all of them or required that they all be met before authorizing a memorandum account. Thus, at different times, the Commission has considered all these factors, considered only some of these factors, or relied on other public policy considerations in determining whether to authorize a memorandum account. Regardless of the specific factors considered, the question presented to the Commission in all instances is whether a utility should be permitted to seek recovery of these costs at a later date without encountering retroactive rate-making issues.

The Division of Water and Audits found that Great Oaks did not establish that it met the factors listed above for the establishment of a memorandum account. DWA noted in its rejection of AL 197-W that Great Oaks had not shown that the District's Resolution 09-92 extending the 15% mandatory conservation through June 2010 was unforeseen. DWA found that the action of the District calling for a 15 percent reduction was known months before Great Oaks filed its most recent GRC. DWA also found that the issues underlying Great Oaks' request for relief in AL197-W are under active consideration in its current general rate case, A.09-09-001 and that ratepayers would not benefit from the requested memorandum account treatment. For the reasons below, we affirm DWA's findings.

Great Oaks argues that its "last" GRC was filed in 2005 and as such the District's action in 2009 could not have been foreseen. The test for whether costs are unforeseen is whether the costs were known or should have been known at the time a utility had an opportunity to act through a rate case application. Great Oaks' opportunity to act in response to the District's call for water conservation was when the company filed its last general rate case. Great Oaks' last general rate case application was filed September 1, 2009, over five months after the District's March 24, 2009 Resolution 09-025. The District's action in March 2009 put all water retailers on notice that the District was calling for a 15 percent reduction in water use.

The extension of the 15 percent reduction in December 2009 was not an unforeseen event at the time Great Oaks filed its GRC application. As the District recognized when it issued Resolution 09-82 in December 2009, the circumstances that precipitated issuing Resolution 09-25 in March 2009 would not be further clarified until the Spring of 2010 when a more complete picture of the 2010 water supply outlook would be known.

Great Oaks argues that a Mandatory Conservation Revenue Adjustment Memorandum Account was not requested in A.09-09-001 because the 15 percent mandatory water conservation was set to expire on December 31, 2009, "a full six months before the rates to be set pursuant to Great Oaks GRC Application would become effective." Great Oaks is in error. The rates to be set by A.09-09-001 are effective September 1, 2009 based on Great Oaks' request for interim rates in AL 196-W-C. This is a full four months

before the original District Resolution 09-25 was to expire. Thus, Great Oaks' justification for not including a request for relief in A.09-09-001 is not tenable.

Great Oaks also argues that it is entitled to these memorandum accounts since these same memorandum accounts were approved for San Jose Water Company (SJWC) who is also a water supplier in the Santa Clara Valley Water District. The DWA approved the establishment of these memorandum accounts for SJWC in response to AL 407 filed May 28, 2009 in response to the District's Resolution 09-25. Great Oaks is not similarly situated to SJWC in regard to this matter. SJWC filed its latest general rate case in January 2009 for a 2010 test year, two months before the District's call for 15 percent mandatory water conservation. Great Oaks, on the other hand, filed its latest general rate case in September 2009 for rates effective September 1, 2009. This is over five months after Resolution 09-25 was issued by the District. As we found above, Great Oaks' AL 197-W does not meet the criteria that the costs are unforeseen in order to establish the memorandum account. Thus, Great Oaks is not similarly situated to SJWC and is not entitled to similar relief through establishment of memorandum accounts.

We find that, on balance, Great Oaks has not established that it met that factors for establishing a memorandum account. We also find that rejection of AL 197-W does not prejudice Great Oaks because the issues underlying the need to establish the two memorandum accounts requested by Great Oaks are being reviewed as part of our consideration of A.09-09-001. Given that Great Oaks has interim rates in place effective September 2009, the ultimate resolution of the issues raised in AL197-W can be dealt with in A.09-09-001 without concern for retroactive rate making. Taken together, these reasons lead us to conclude that DWA correctly rejected Great Oaks' request.

## **COMMENTS**

Public Utilities Code § 311(g)(1) provides that resolutions must generally be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. This resolution was mailed on July 13, 2010 to the parties on the service list attached to AL 197-W. Comments were received from Great Oaks on July 28, 2010. DRA filed timely comments on August 2, 2010 that support the resolution as drafted. Great Oaks' comments claim that the Draft Resolution contains the following factual, legal, and technical errors:

- The Santa Clara Water District's call for a 15 percent mandatory water conservation of all retailers in Santa Clara County was not unforeseen when Great Oaks filed its general rate case Application, A.09-09-001;
- Great Oaks did not establish that it met the Commission's factors for establishing a memorandum account;

- The issues underlying the need to establish the memorandum accounts are being reviewed as part of the Commission's consideration in A.09-09-001, and that the ultimate resolution of these issues can be dealt with in A.09-09-001 without concern for retroactive ratemaking;
- Great Oaks had time to address the 15 percent mandatory call for water conservation in A.09-09-001; and
- Great Oaks is not similarly situated to San Jose Water Company in terms of establishing memorandum accounts in response to actions by the Santa Clara Water District.

We disagree with Great Oak's claims. The Discussion Section of this Resolution provides support for each of the Findings cited above.

Great Oaks also claims that the Draft Resolution errs because its GRC Application does not cover the time periods covered by their Advice Letter request. This is not accurate however, because Great Oak's filing of AL 196-W-C and Staff's acceptance of the interim rates contained therein was effective as of September 1, 2009. Thus, the effective date for rate changes in A.09-09-001 will begin on September 1, 2009, the effective date of Great Oaks' interim rate request, not July 1, 2010 as Great Oaks claims in its comments.

## **FINDINGS AND CONCLUSIONS**

1. Great Oaks Water Company filed Advice Letter No. 197-W on February 2, 2010 requesting authority to establish two memorandum accounts. The first is a Mandatory Conservation Memorandum Account to track operational and administrative costs associated with implementing voluntary water conservation programs and practices. The second is a Mandatory Conservation Revenue Adjustment Memorandum Account for tracking the revenue impact on sales occurring during times when a governmental agency requires mandatory water conservation practices.
2. 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.
3. Great Oaks Water Company filed a timely request for Commission review of the Division of Water and Audits' disposition of Advice Letter No. 197-W on February 19, 2010.

4. The Division of Ratepayer Advocates filed a timely protest to Advice Letter No. 197-W on February 22, 2010 wherein it argues that Great Oaks Water Company's request does not satisfy the criteria set by the Commission for establishing memorandum accounts. The Division of Ratepayer Advocates also argues that the relief requested in Advice Letter 197-W is pending before the Commission in Great Oaks Water Company's general rate case application, A.09-09-001.
5. Great Oaks Water Company filed a timely response to the Division of Ratepayer Advocates protest on March 1, 2010 wherein it argues that Advice Letter 197-W satisfies the criteria for establishing memorandum accounts. Great Oaks Water Company also argues that the requested relief is not pending in A.09-09-001.
6. Advice Letter 197-W cites the Santa Clara Valley Water District's December 8, 2009 Resolution 09-82 that extends the call for 15 percent mandatory water conservation of all water retailers in Santa Clara County until June 30, 2010.
7. The Santa Clara Valley Water District is responsible for managing the overall water supply in Santa Clara County but has limited authority to mandate water use reductions. The District must rely on the actions of the water retailers, cities, and county to enact and implement local ordinances, and conservation measures.
8. Santa Clara Valley Water District issued its initial request for a 15 percent mandatory water conservation of all water retailers in Santa Clara County in Resolution 09-25 issued March 24, 2009.
9. Great Oaks Water Company is a water retailer in Santa Clara County.
10. Great Oaks Water Company filed its general rate case application, Application 09-09-001, on September 1, 2009.
11. Great Oaks Water Company filed Advice Letter 196-W requesting interim rate relief on July 16, 2009 pursuant to procedures established by the Commission for addressing delays in processing a general rate case beyond the three-year cycle.
12. The Division of Water and Audits approved Advice Letter 196-W, as supplemented, with an effective date of September 1, 2009.
13. The interim rate increase is subject to refund and will 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 the general rate case under the Commission's Rate Case Plan as specified in Decision 07-05-062.

14. The effective date for rate changes in A.09-09-001 will begin on September 1, 2009, the effective date of Great Oaks' interim rate request in Advice Letter 196-W.
15. Great Oaks Water Company had five months between the issuance of Resolution 09-25 on March 24, 2009 and its filing of a general rate case on September 1, 2009 to act to incorporate the impacts of a 15 percent call for water conservation by the Santa Clara Valley Water District.
16. The Santa Clara Valley Water District's call for a 15 percent mandatory water conservation of all retailers in Santa Clara County was not unforeseen when Great Oaks Water Company filed its general rate case Application 09-09-001.
17. Extending the 15 percent mandatory water conservation of all retailers in Santa Clara County from December 31, 2009 to June 30, 2009 was not unforeseen when Great Oaks Water Company filed Application 09-09-001 given that the circumstances requiring the need for water conservation would not be clarified until the Spring of 2010 when a more complete picture of the 2010 water supply outlook would be known.
18. SJWC is not similarly situated to Great Oaks Water Company in terms of establishing memorandum accounts in response to actions by the Santa Clara Valley Water District. SJWC filed its last general rate case two months before the Santa Clara Valley Water District issued Resolution 09-025 on March 24, 2009.
19. Great Oaks did not establish that it met the factors for establishing a memorandum account.
20. Rejection of AL 197-W does not prejudice Great Oaks because the issues underlying the need to establish the two memorandum accounts requested by Great Oaks are being reviewed as part of our consideration of A.09-09-001. Given that Great Oaks has interim rates in place effective September 2009, the ultimate resolution of the issues raised in AL197-W can be dealt with in A.09-09-001 without concern for retroactive rate making
21. This resolution was circulated for public comment pursuant to Public Utilities Code Section 311(g) (1).

**THEREFORE IT IS ORDERED THAT:**

1. Advice Letter No. 197-W is rejected.
2. 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 August 12, 2010; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

Paul Clanon  
Executive Director

MICHAEL R. PEEVEY  
President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners