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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-4877
June 9, 2011**

R E S O L U T I O N

(RES. W-4877), GOLDEN STATE WATER COMPANY (GOLDEN STATE). ORDER APPROVING THE EXECUTED ASSET LEASE AGREEMENT WITH CONTRA COSTA WATER DISTRICT (CCWD), AS AMENDED PURSUANT TO DECISION (D.) 10-06-031.

SUMMARY

Ordering Paragraph 3 in D.10-06-031 required Golden State to submit an executed Asset Lease Agreement (Agreement), as amended by the terms specified in Ordering Paragraph 2 in D.10-06-031, for Commission approval. Golden State filed Advice Letter 1428-W on December 28, 2010 in compliance with D.10-06-031. Attached to Advice Letter 1428-W is the executed Agreement along with the executed First Amendment to the Agreement addressing the modifications called for in D.10-06-031. This resolution approves the executed Agreement between Golden State and CCWD, as amended pursuant to Ordering Paragraph 2 in D.10-06-031. Golden State is reminded that approval of the executed amended Agreement does not include approval of the rate-making treatment of the Lease Price. This issue is pending Commission review in Application (A.) 10-01-009.

BACKGROUND

On August 6, 2009, Golden State filed Application (A.) 09-08-004 requesting authorization to implement corrective measures to address water quality problems in its Bay Point Customer Service Area (Bay Point). In D.10-06-031, the Commission conditionally approved the Agreement between Golden State and CCWD to lease excess capacity at the Randall-Bold Water Treatment Plant for the useful life of the plant in order to address the water quality problems in Bay Point. The Commission's approval was conditioned on two changes to the Agreement. First, the Commission required that Section 3.2, dealing with an eminent domain clause, be removed in its entirety. Section 3.2 precluded CCWD from exercising its power of eminent domain to take all or any part of Golden State's Bay Point system during the term of the Agreement. Section 3.2 went on to discuss the specific methodology for determining fair market value in a condemnation proceeding in the event an arbitrator or court held

that the prohibition on CCWD from exercising its power of eminent domain to be illegal, null, void, or against public policy. The Commission objected both to the provision that would deny CCWD the exercise of its power of eminent domain and to the provision committing CCWD and Golden State to supporting a specific methodology for determining fair market value in a condemnation proceeding. As such, the Commission required as a condition for approving the Agreement, that Section 3.2 be removed in its entirety.

Second, the Commission required that Section 4.2.1 be modified in order to retain its ability to properly set customer rates. Section 4.2.1 made closing of the transaction conditional on this Commission's approval of specific rate-making treatment for the lease price of the Randall-Bold Water Treatment Plant and for the un-depreciated value of Golden State's abandoned Hill Street Water Treatment Plant. The Commission found that rate-making is within its exclusive jurisdiction.

The language in Section 4.2.1 provided for continued rate-base treatment of the abandoned Hill Street Water Treatment Plant. However, such treatment is just one of the Commission's rate-making alternatives for this former facility. The Commission determined that its right to make that rate-making decision should be preserved for the general rate case proceeding (A.10-01-009). As such, the Commission ordered that Section 4.2.1 be modified to remove language that specifies the rate-making treatment for the Hill Street Water Treatment Plant.

With regard to rate-making for the Randall-Bold Water Treatment Plant, the Commission also determined that the evidence in the record in A.09-08-004 was not sufficient for it to resolve that issue in that proceeding. The determination of the rate-making treatment for the Randall-Bold Water Treatment Plant is still under consideration in Golden State's general rate case, A.10-01-009.

A third section of the Agreement, Section 1.2.2, deals with adjustment of the lease price that escalates the final costs of the pipeline necessary to interconnect the Randall-Bold Water Treatment Plant to the Golden State system. The agreement was signed prior to completion of the pipeline. The Agreement provides that at the time of the final lease execution the agreed upon cost for the pipeline will be escalated using an engineering construction cost index. The Commission requested that CCWD and Golden State revisit Section 1.2.2. However, the Commission did not make changes to Section 1.2.2 a condition of its approval.

NOTICE AND PROTESTS

On December 28, 2010, Golden State served copies of AL 1428-W on its General Order 96-B service list for the Bay Point District and the service list for A.09-08-004. No protests were received.

DISCUSSION

The executed First Amendment to the Asset Lease Agreement signed by Golden State on December 14, 2010 and by CCWD on December 22, 2010 is attached to Advice Letter 1428-W. The executed First Amendment to the Agreement addresses the two required changes ordered by D.10-06-031. Section 3.2 of the Agreement has been deleted in its entirety. Section 4.2.1 has been modified in the manner requested by the Commission to delete reference to the rate-making treatment for Golden State's abandoned Hill Street Water Treatment Plant.

Decision 10-06-031 also discussed the rate-making treatment for the lease price of the Randall-Bold Water Treatment Plant. Review of the rate-making treatment for the Randall-Bold Water Treatment Plant is currently pending in Golden State's general rate case proceeding, A.10-01-009. Section 4.1 of the Lease Agreement states that before the transaction closes the conditions precedent set forth in Section 4.2 of the Agreement either need to be satisfied or waived. Section 4.2.1 of the Agreement provides for the Commission's approval of the agreement, including the Commission's approval of inclusion of the lease price in Golden State's rate base for the rate-making district that includes the Bay Point Water System, as a condition precedent. Section 4.2 provides that Golden State has the sole and absolute discretion to waive Section 4.2.1.

Our approval of the Amended Agreement in this Resolution does not include approval of the rate-making treatment that Golden State specifies in Section 4.2.1 of the Agreement. If Golden State lets the current Amended Agreement lapse either because it does not waive the condition precedent in Section 4.2.1 of the Amended Agreement or get a written extension of the June 30, 2011 termination date and thereby causes the Amended Agreement to terminate by its own provisions, then Golden State is at risk for any incremental costs (beyond the cost in the Amended Agreement) if it has to enter into a new agreement with the Contra Costa Water District (or another entity) for water treatment, or build its own water treatment plant.

In Advice Letter 1428-W Golden State indicates that it requested CCWD to remove the engineering construction cost escalation index in Section 1.2.2. Golden State reports that "CCWD respectfully declined to do so as it was part of the negotiated contract." (Advice Letter 1428-W at p.2)

The executed First Amendment also modifies Section 6.2, the automatic termination provision of the Agreement, if the conditions precedent to closing the transaction fail to be met. The automatic termination date is changed from January 1, 2011 to June 30, 2011 in order to allow the Commission to review the Agreement as amended by the executed First Amendment and determine the rate-making issues raised by the Agreement in A.10-01-009.

COMMENTS

Public Utilities Code Section 311(g) (3) and Rule 14.7 of our Rules of Practice and Procedure exempt uncontested matters pertaining solely to water corporations from the otherwise generally applicable requirement for a 30-day public review and comment period. Accordingly, the draft resolution was mailed to Golden State and made available for a shortened 10-day comment period on May 9, 2011 prior to its consideration by the Commission.

Comments were received from Golden State on May 18, 2011. Golden State suggests that we authorize a balancing account in which to record: i) the \$4.7 million payment for use of the Randall-Bold Water Treatment Plant; and ii) the engineering construction cost index escalation as required by Section 1.2.2 of the Agreement. While we are not convinced that the creation of this balancing account is necessary, in order to provide Golden State the assurance that recovery of these principal amounts is not in question, we will authorize the balancing account requested in which to record the expenses required by the Amended Agreement we are approving today. Golden State also argues that it is punitive to require it to execute the closing of the Amended Agreement without certainty of rate recovery. Golden State is not required to close the transaction without certainty of rate recovery. In the first place, this Resolution provides the certainty of recovery of the \$4.7 million plus the engineering cost escalation. What is not resolved is the rate-making treatment for that recovery, i.e., how that amount should be recovered. That issue, to be resolved in A.10-01-009, should not be a barrier at this point to Golden State from moving forward and closing the transaction contemplated in the Amended Agreement approved in this Resolution. Golden State does not dispute that the rate-making treatment for the Amended Agreement is currently pending Commission review in A.10-01-009. In the second place, this resolution does not expressly require Golden State to close the transaction. However, if Golden State is unwilling to live with the rate recovery authorized in A.10-01-009, and thereby causes the Amended Agreement to terminate by its own provisions, it is only fair that Golden State should be at risk for any incremental costs of obtaining water treatment. Finally, we have clarified the discussion on Section 1.2.2 of the Agreement in the background section above pursuant to Golden State's comments.

FINDINGS AND CONCLUSIONS

1. On December 28, 2010, Golden State Water Company filed Advice Letter No. 1428-W requesting approval of the executed Asset Lease Agreement with Contra Costa Water District, as amended pursuant to Commission Decision 10-06-031.
2. The Division of Water and Audits suspended Advice Letter 1428-W on January 12, 2011.
3. Ordering Paragraph No. 2 of Decision 10-06-031 conditioned approval of the Asset Lease Agreement on the removal of Section 3.2 and the modification of Section 4.2.1 to remove language that specifies the rate-making treatment for the Hill Street Water Treatment Plant.
4. The Commission in Decision 10-06-031 ordered that further review of the rate-making proposals shall be undertaken in Golden State Water Company's pending general rate case proceeding, Application 10-01-009.
5. Ordering Paragraph No. 2 of Decision 10-06-031 also required Golden State water Company to request that Contra Costa Water District remove the engineering construction cost escalation index in Section 1.2.2 of the Asset Lease Agreement. The Commission did not make changes to Section 1.2.2 a condition of its approval.
6. The executed First Amendment to the Asset Lease Agreement was signed by Golden State Water Company on December 14, 2010 and by Contra Costa Water District on December 22, 2010.
7. The executed First Amendment to the Asset Lease Agreement removes Section 3.2 in its entirety and modifies Section 4.2.1 to remove language that specifies the rate-making treatment for the Hill Street Water Treatment Plant as ordered by the Commission in D.10-06-031.
8. Section 4.1 of the Asset Lease Agreement specifies that before the transaction closes certain conditions precedent must be satisfied or waived.
9. Section 4.2.1 (as amended by the First Amendment) makes Commission approval of the Asset Lease Agreement, including the Commission's approval of the inclusion of the lease price of the Randall-Bold Water Treatment Plant in Golden State Water Company's rate base, a condition precedent to closing the transaction.
10. Section 4.2 of the Asset Lease Agreement provides Golden State Water Company with the sole and absolute discretion to waive Section 4.2.1.
11. The rate-making treatment discussed in Section 4.2.1 of the executed First Amendment to the Asset Lease Agreement is pending before the Commission in Golden State's general rate case, A.10-01-009.
12. In Advice Letter 1428-W, Golden State states that it requested that Contra Costa Water District remove the engineering construction cost escalation index in Section

- 1.2.2 of the Asset Lease Agreement. Golden State Water Company reports that Contra Costa Water District respectfully declined to do so as Section 1.2.2 was part of the negotiated contract.
13. The executed First Amendment to the Asset Lease Agreement modifies Section 6.2 by changing the automatic termination date for the Asset Lease Agreement from January 1, 2011 to June 30, 2011 if the conditions precedent to closing of the transaction are not satisfied.
 14. There are no protests to Advice Letter 1428-W.
 15. In the executed First Amendment To Asset Lease Agreement Golden State Water Company has satisfied the conditions to our approval of the Asset Lease Agreement with Contra Costa Water District specifically required by D.10-06-031.
 16. Approval of the Lease Agreement in this Resolution does not include approval of the rate-making treatment that Golden State seeks in Section 4.2.1 of the Lease Agreement.
 17. Golden State suggests that we authorize a balancing account in which to record:
 - i) the \$4.7 million payment for use of the Randall-Bold Water Treatment Plant; and
 - ii) the engineering construction cost index escalation as required by Section 1.2.2 of the Agreement.
 18. While we are not convinced that the creation of this balancing account is necessary, in order to provide Golden State Water Company the assurance that recovery of the principal amounts in Finding No. 17 is not in question, a balancing account should be authorized to record the expenses required by the Amended Agreement we are approving today.
 19. The Asset Lease Agreement between Golden State Water Company and Contra Costa Water District, as amended by the First Amendment to Asset Lease Agreement, should be approved.
 20. If Golden State lets the current Amended Agreement lapse either because it does not waive the condition precedent in Section 4.2.1 of the Amended Agreement or get a written extension of the June 30, 2011 termination date and thereby causes the Amended Agreement to terminate by its own provisions, then Golden State is at risk for any incremental costs (beyond the cost in the Amended Agreement) if it has to enter into a new agreement with the Contra Costa Water District (or another entity) for water treatment, or build its own water treatment plant.

THEREFORE IT IS ORDERED THAT:

1. The Asset Lease Agreement between Golden State Water Company and Contra Costa Water District, as amended by the First Amendment to Asset Lease Agreement, is approved.
2. Effective as of the date of this resolution, there is established for Golden State Water Company a Randall-Bold Balancing Account in which Golden State Water Company may record:
 - i) the \$4.7 million payment for use of the Randall-Bold Water Treatment Plant; and
 - ii) the engineering construction cost index escalation as required by Section 1.2.2 of the Asset Lease Agreement.
3. Within 30 days of the date of this resolution, Golden State Water Company shall file a Tier 1 advice letter adding the Randall-Bold Balancing Account to its tariff.
4. 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 June 9, 2011; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
President

TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON

Commissioners