

DWA/BMD/JB5/RKK/jlj

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

DIVISION OF WATER AND AUDITS

RESOLUTION W-4899

January 12, 2012

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

**(RES. W-4899), SAN GABRIEL VALLEY WATER COMPANY (SAN GABRIEL). ORDER REJECTING WITHOUT PREJUDICE SAN GABRIEL'S REQUEST TO PERMIT PAYMENT OF WATER BILLS USING CREDIT OR DEBIT CARDS OR ELECTRONIC CHECKS AS BILL PAYMENT OPTIONS.**

**By Advice Letter (AL) No. 394 filed on March 7, 2011.**

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**SUMMARY**

By AL No. 394, filed on March 7, 2011, San Gabriel Valley Water Company (San Gabriel) seeks authority to accept credit or debit cards or electronic checks (e-checks) as bill payment option from its customers. San Gabriel's customers would be charged a convenience fee of \$3.95 by a third-party vendor. San Gabriel requests that these new bill payment options would not be available to customers who have incurred two or more dishonored payments within the last 12 months or who have made a fraudulent payment.

This resolution rejects without prejudice San Gabriel's request to offer a credit card, debit card, and e-check bill payment option to its customers. The request is rejected for the reasons discussed herein including lack of a cost-savings analysis, lack of allocation of costs only to participants, and concerns with the proposed third-party vendor contract provisions.

If San Gabriel requests a similar program in the future, it should justify why customers who have incurred dishonored payments should not be included in the program.

**BACKGROUND**

San Gabriel seeks Commission authorization to: (1) permit payment of water bills using a credit or debit card pursuant to Public Utilities (PU) Code § 755 or by e-check; and (2)

not extend these payment options to customers who have two or more returned credit/debit/e-check payments within the last twelve months or who have made fraudulent payments in the past.<sup>1</sup>

San Gabriel has stated that it is not proposing the program as a cost saving measure that will improve the company's profitability. Rather, San Gabriel is simply offering the program as a service that is expected and frequently requested by its customers. (San Gabriel Response to Division of Water and Audits Data Request RK 002, Response 2b.)

San Gabriel's proposal would allow customers to pay their bills by credit or debit card or by e-check through a third-party vendor. The third-party vendor would add a non-refundable convenience fee of \$3.95 to the customer's credit or debit card or e-checking account for each transaction. No fees related to the use of credit or debit cards or e-checks will be charged to customers who do not use this service. Customers who have two or more returned credit or debit card or e-check payments within the last 12 months or who have made a fraudulent payment in the past would be precluded from using these payment options.

San Gabriel proposes to inform its customers regarding the new payment options through bill inserts and by posting a link on its website after AL 394 has been approved by the Commission.

On March 25, 2011, the Division of Water and Audits (DWA) suspended AL No. 394 because additional information was required to complete review of the filing.

## **NOTICE AND PROTEST**

San Gabriel served AL No. 394 on its service list in accordance with General Order 96-B, Water Industry Rules 4 and 4.1 and General Rules 4.3 and 7.2. San Gabriel did not provide notice of AL No. 394 to its customers as required by General Order 96-B, Water Industry Rule 4.2.

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<sup>1</sup> Public Utilities Code Section 755 does not mention e-check payments. For purposes of this resolution, we are treating e-check payments in the same manner as credit and debit card payments because it makes sense to do so from a policy perspective.

On March 25, 2011, DWA granted the Division of Ratepayer Advocates' (DRA) request for a one-week extension from March 28, 2011 to April 4, 2011, to file a protest to AL No. 394.<sup>2</sup> San Gabriel's Director of Rates and Revenue was copied on this e-mail.

On April 4, 2011, DRA timely protested Advice Letter No. 394. DRA recommends that AL No. 394 should be rejected because: (1) San Gabriel has not provided the data for the Commission to analyze the new payment options' impact on the utility's costs and savings in compliance with PU Code § 755; (2) the request is not justified through a cost- savings analysis that demonstrates cost savings associated with the requested payment options have been satisfied; (3) the vendor selection may not be reasonable due to lack of competitive bidding; and (4) no information is provided to explain how "e-checking" is justified under PU Code § 755.

No other protests to AL No. 394 were received.

### **San Gabriel's Response to DRA's Protest**

On May 31, 2011, San Gabriel wrote to the Director of DWA requesting that DRA's protest should be rejected because it was not filed in a timely fashion pursuant to GO 96-B, General Rule 7.4.1. San Gabriel did not respond to the substantive issues raised in DRA's protest.

## **DISCUSSION**

### ***1. Compliance with PU Code § 755 and Cost-Savings Analysis***

A water utility "may offer credit card and debit card bill payment options, if approved by the [C]ommission". (PU Code § 755(b).) Water utilities are also permitted to recover "the reasonable expenses incurred . . . for providing [their] customers the option of paying their bills by credit card or debit card." (PU Code § 755(a)(1).) However, "[o]nly the customers that choose to use these payments options incur the additional charge and [ ] no portion of the expense [can be] shifted to customers that do not choose to pay a bill by credit card or debit card, unless and until the [C]ommission determines that the savings to ratepayers exceeds the net cost of accepting those cards." (PU Code

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<sup>2</sup> E-mail from DWA, to DRA dated March 25, 2011, granting a one-week extension of time to file late filed protest to San Gabriel's Advice Letter 394.

§ 755(a)(2).) PU Code § 755(b) states that a water utility offering credit card and debit card bill payment options “may recover reasonable transaction costs incurred by the [water utility] only from those customers that choose to pay by those payment options.” PU Code § 755(c) requires the Commission to determine “through existing regulatory mechanisms the reasonableness of transaction costs charged to customers that choose to pay [their water bills] by a credit card or debit card bill payment pursuant to this section.” The Commission “shall determine how any associated costs or potential savings as a result of those customers paying by the credit card or debit card payment option shall be passed on to...water corporation customers”. (PU Code § 755(c).) If the Commission “determines that the savings to the ... water corporation exceeds the costs to the ... water corporation, the net savings shall be passed on to...water corporation customers”. (Pursuant to PU Code § 755(c) (3).)

San Gabriel believes that its request complies with the requirements of PU Code § 755 because only customers that choose to use the credit or debit card or e-check payment options to pay their bills will incur the additional charges associated with providing these payment options and no portion of these expenses is shifted to customers that do not choose to pay their bills using a credit or debit card or e-check. San Gabriel states that since it will not be collecting the convenience fee, any additional cost or savings as a result of adding credit or debit cards or electronic checks as payment options will neither increase nor decrease its revenue, expenses, or rate of return. (San Gabriel Response to DWA Data Request RK 002, Response 2b.)

However, San Gabriel has indicated that to make the proposed payment options available to its customers, it will have to modify its accounting and billing software and integrate it with that of the third-party payment vendor (vendor). This will require: (1) programming to share customer billing information with the vendor; and (2) creating processes to electronically retrieve transaction remittances from the vendor and modification of customer payment history in San Gabriel’s billing application software to reflect the new source of payments. San Gabriel wants the costs associated with programming, testing and training of its employees to implement the new systems to be considered as part of San Gabriel’s normal expenses and charged to all customers. (San Gabriel Response to DWA Data Request 001, Response 3(i).) In addition, San Gabriel would allocate the costs of about \$1,000 for installing four lobby phones to all customers. (San Gabriel Response to DWA Data Request 001, Response 3(ii).) San Gabriel does not anticipate any additional ongoing costs from the third-party payment vendor for the convenience fee paid by customers who use the payment options that will cover the vendor’s costs. (San Gabriel Response to DWA Data Request RK 001, Response 3(ii)).

From experience with other utilities, Staff believes that, in addition to the upfront non-quantified programming and processing costs admitted by San Gabriel above, there will be ongoing expenses due to time spent by customer service representatives for assisting customers in credit or debit card payments and e-check payments. Additional costs will be incurred for fulfilling required notice requirements, printing and mailing costs and programming related costs to post notice of the availability of the credit/debit card and e-check payment program on San Gabriel's website. These costs may be partially offset by savings from the program that may occur from fewer service disconnections per month because of timely bill payments.

As discussed above, PU Code § 755 allows San Gabriel to recover reasonable costs for offering its customers an option to pay bills by credit or debit card but San Gabriel may only recover these costs from those customers that choose to pay their bill by these means. Also, PU Code § 755 requires that no portion of the expenses for offering these payment options be shifted to customers that do not choose to pay a bill by credit card or debit card unless and until the Commission determines that the savings to ratepayers exceeds the net cost of offering these payment options. Also, as discussed above (see fn 1), for purposes of this resolution we are treating e-check payments in the same manner as credit and debit card payments mentioned in PU Code § 755. Since San Gabriel has not quantified any of these costs or the estimated savings from offering the credit or debit card or e-check payment options, it is not possible to ascertain if the savings from offering these payment options will offset the costs that would allow us to allocate the costs related to offering these payment options to customers that do not choose to pay their bill by either credit or debit card or e-check. Recovery of costs of this program from the general body of non-participating customers is not permitted given that San Gabriel has not shown that the credit and debit card bill and e-check payment option offers any net savings. Since San Gabriel proposes to pass on to all customers (instead of only those who use them) the costs of implementing these payment options, we cannot find that San Gabriel's proposal is compliant with PU Code § 755.

If San Gabriel seeks authorization to offer a credit card or debit card or e-check payment option in the future, it needs to either: (1) provide a cost-savings analysis as contemplated in PU Code § 755(a)(2) and (c)(3) if expenses associated with these payment options are to be allocated to all ratepayers; or (2) provide a quantification of associated program expenses and a means of allocating these expenses only to those customers that choose to use the credit card/debit card/e-check option.

## **2. Vendor Selection**

San Gabriel selected a third-party payment vendor to provide the credit or debit card or e-check services without competitive bidding. The reasons given by San Gabriel are

that there are not numerous third-party bill payment vendors in the marketplace and a competitive bidding process would take too much time. San Gabriel states that the contractor was selected because it met San Gabriel's internally developed criteria for offering the service. Those criteria included: (1) no charges for set-up fees, monthly retainer fees, other one-time fees or regularly recurring fees; (2) a reasonable term of the contract; (3) a lengthy history of processing credit and debit card transactions; and (4) having an operating system that provides real-time posting to its customers accounts in order to avoid wrongful shut-offs. (San Gabriel Response to DWA Date Request RK 001, Response 4.)

A review of the contract between San Gabriel and the third-party vendor indicates that the contract contains a number of clauses that would subject San Gabriel to penalties for not meeting certain specified minimum requirements for the number of transactions processed and also penalties for not meeting certain other contractual requirements. Furthermore, the third-party vendor can increase the transaction fees as a result of changes in telecommunications rates. (San Gabriel Response to DWA Data Request RK 001, Response 2.) We find a number of provisions of the contract that was provided to Staff under the confidentiality provisions of Public Utilities Code Section 583 to be problematic. If San Gabriel seeks authorization to implement a credit/debit card/e-check bill payment option in the future, it should seek Staff input regarding the appropriateness/reasonableness of the contract prior to executing a contract with a third-party vendor. Further, our preference is to have these types of contracts competitively bid when possible. We note that other utilities have been able to select a third-party payment vendor through a competitive bid process and see no reason why San Gabriel cannot do the same.

**3. *Justification of convenience fee charges for credit or debit card or e-check bill payment services***

San Gabriel requests that customers who wish to avail themselves of the option of paying their bills using a credit or debit card or by e-check be required to pay a non-refundable convenience fee of \$3.95 per transaction. As discussed above, the customer would pay the convenience fee directly to the third party vendor. San Gabriel conducted an internet based survey of other water utilities offering credit or debit card payment options to their customers. The utility found that the cost of providing these payment options varies from \$3.25 to \$3.95.

We have previously addressed the issue of a reasonable convenience fees for bill payment by credit or debit card in Resolution G-3427 (May 7, 2009). In Resolution G-3427, we found that the convenience fees of \$3.75 per transaction as proposed by Southern California Edison (SCE) was unreasonable when compared with convenience

fees in the range of \$1.45 to \$1.50 that are offered by some other utilities to their customers.<sup>3</sup> We subsequently found \$1.75 to be a reasonable convenience fees for SCE. We find the proposed \$3.95 convenience fee per transaction is not reasonable. If San Gabriel chooses to reapply for a credit or debit card or e-check payment option in the future, it must propose a lower convenience fee in line with what we have approved for other utilities.

**4. *Extending the credit card/debit card and e-check payment option to all customers***

San Gabriel has not provided justification for not extending the credit or debit card or e-check payment option to those customers who have had two or more returned credit or debit card or e-check payments within the last 12 months. Currently, there are tariff penalties for non-payment of bills, e.g., the returned check charge of \$20.00 that is part of San Gabriel's current tariffs. At this time, Staff believes that this charge, if extended to other forms of payment, is an adequate deterrent for returned payments (although Staff or the Commission may revisit the matter of the level of this charge in the future). As more payment types evolve due to advancements in technology, the language in the tariffs should include all forms of payments that may be returned by financial institutions. Such an arrangement would permit San Gabriel to charge customers who initiate the returned payments rather than have the general body of customers absorb these costs as part of authorized rates. Other Class A water companies' tariffs already have similar language regarding charging returned payments for both traditional checks and electronic payments. Staff recommends, and we agree, that the credit/debit card/e-check payment options should be made available to all customers irrespective of their payment history. If San Gabriel seeks authorization for offering a credit or debit card or e-check payment option in the future, it should include as part of its request a modification to its Tariff Rule 9.C that would extend the charge for returned payments to include various forms of electronic payments. We do not look with favor in precluding customer participation in a credit/debit card/e-check payment option based on their payment history.

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<sup>3</sup> The Commission approved convenience fees of \$1.50 for Southern California Gas Company and San Diego Gas and Electric Company (Resolution G-3310) and \$1.45 for Pacific Gas and Electric Company (Resolution G-3390).

## **COMMENTS**

Public Utilities Code section 311(g)(1) provides that resolutions generally must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

Accordingly, this draft resolution was mailed to the utility and protestants and made available for comment on December 12, 2011. No comments were received.

## **FINDINGS AND CONCLUSIONS**

1. San Gabriel Valley Water Company filed Advice Letter No. 394 requesting authority to offer its water customers a credit card/debit card/electronic check (e-check) payment option and to not extend these payment options to customers who have two or more returned credit card/debit card/e-check payments within the last twelve months or who have made fraudulent payments in the past.
2. The Division of Ratepayer Advocates timely protested Advice Letter No. 394.
3. The Division of Ratepayer advocates recommends that Advice Letter No. 394 should be rejected because: (1) San Gabriel has not provided the data for the Commission to analyze the new payment options' impact on the utility's costs and savings in compliance with PU Code § 755; (2) the request is not justified through a cost-savings analysis that demonstrates cost savings associated with the requested payment options have been satisfied; (3) the vendor selection may not be reasonable due to lack of competitive bidding; and (4) no information is provided to explain how "e-checking" is justified under P U Code § 755.
4. San Gabriel Valley Water Company did not respond to the substantive issues raised in the Division of Ratepayer Advocates' protest.
5. San Gabriel Valley Water Company did not provide notice of Advice Letter No. 394 to its customers as required by General Order 96-B, Water Industry Rule 4.2.
6. If San Gabriel Valley Water Company chooses to renew its request to establish a credit or debit card or e-check payment option in the future, it must provide notice to its customers.
7. Public Utilities Code § 755 permits water utilities to recover reasonable expenses incurred for providing customers the option of paying their bills by credit and debit card.

8. Public Utilities Code § 755 does not mention e-checks. It is reasonable to treat e-check payments in the same manner as credit and debit card payments mentioned in Public Utilities Code § 755.
9. Public Utilities Code § 755 requires that only the customers that choose to use the credit or debit card payment option incur the additional charge and that no portion of the expense is shifted to customers that do not choose to pay a bill by credit card or debit card, unless and until the Commission determines that the savings to ratepayers exceeds the net cost of accepting those cards.
10. Public Utilities Code § 755 requires the Commission to determine through existing regulatory mechanism the reasonableness of transaction costs charged to customers that choose to pay a water corporation bill by a credit or debit card payment option pursuant to this code.
11. Public Utilities Code § 755 requires the Commission to determine how any associated costs or potential savings as a result of customer paying by credit or debit card are passed on to water corporations customers. Under Public Utilities Code § 755, if the Commission determines that the savings to the water corporation exceed the costs to the utility, the net savings shall be passed on to water corporation customers.
12. A non-refundable convenience fee of \$3.95 per transaction is proposed to be collected by San Gabriel Valley Water Company's third party vendor from customers who opt to pay their bill using a credit or debit card or e-check.
13. Convenience fees in the range of \$1.45 to \$1.75 are offered by other utilities to customers who pay their bills by using credit or debit cards.
14. It is not reasonable that customers be charged a convenience fee of \$3.95 for each transaction for using a credit or debit card or e-check to pay water bills.
15. If San Gabriel Valley Water Company chooses to renew its request to establish a credit or debit card or e-check payment option in its tariff, any convenience fees it proposes must be reasonable and in line with what the Commission has approved for other utilities.
16. San Gabriel Valley Water Company proposes to preclude customers who have had their credit or debit card or e-check payments denied by their financial institutions from use of the credit or debit card or e-check payment option.

17. San Gabriel Valley Water Company has not justified why customers who have had their credit or debit card or e-check payments denied by their financial institutions should be precluded from using the credit or debit card or e-check payment option.
18. San Gabriel Valley Water Company's proposal to preclude individuals from signing up for payment of bills using the credit card/debit card/e-check payment option because of their payment history should be rejected, as there are current tariff penalties for non-payment of bills.
19. San Gabriel Valley Water Company will incur costs needed to modify its accounting and billing systems and coordinate the changes with those of the vendor's systems prior to offering the credit and debit card and e-check payment options available to its customers.
20. San Gabriel Valley Water Company has not quantified any of its costs or the estimated savings from offering the credit or debit card or e-check payment options. It is not possible to ascertain if the savings from offering these payment options will offset the costs that would allow the Commission as a matter of law or policy to allocate the costs of providing these payment options to customers that do not choose to pay their bill by credit or debit card or e-check.
21. San Gabriel proposes to pass on to all customers the cost of implementing the credit or debit card or e-check payment options program, irrespective of whether or not the use these payment options.
22. San Gabriel Valley Water Company's proposal to allocate related costs from offering the credit or debit card payment options to customers not using these payment options without the ability of the Commission to determine whether the savings to ratepayers exceeds the costs of offering these payment options would violate Public Utilities Code § 755(a)(2).
23. San Gabriel Valley Water Company's selection of a third party payment vendor for offering credit or debit card or e-check services was not based on competitive bidding.
24. We find a number of provisions of San Gabriel Valley Water Company's contract with the third-party payment vendor that was provided to the Division of Water and Audits Staff under the confidentiality provisions of Public Utilities Code § 583 to be problematic.

25. San Gabriel Valley Water Company's proposal to offer a credit and debit card and e-check payment service option should be rejected without prejudice as it is not compliant with Public Utilities Code § 755 and is not good policy.

**THEREFORE IT IS ORDERED THAT:**

1. San Gabriel Valley Water Company's Advice Letter No. 394 requesting authorization to allow customers the option to pay their water bills by credit or debit card or by electronic check is rejected without prejudice. San Gabriel Valley Water Company may seek authorization to implement such payment options in a future Tier 3 advice letter or application pursuant to the guidance provided in this Resolution.
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 January 12, 2012; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

MICHAEL R. PEEVEY  
President

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