WATER/ALJ/WD/jlj

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION **RESOLUTION W-4556**
AUGUST 25, 2005

R E S O L U T I O N

(RES. W-4556), GREAT OAKS WATER COMPANY (Great Oaks) REQUESTS A WAIVER OF THE REQUIREMENTS OF THE COMMISSION'S GENERAL RATE CASE PLAN FOR CLASS A WATER UTILITIES, DECISION 04-06-018, TO FILE ITS NEXT GENERAL RATE CASE BY AN ADVICE LETTER INSTEAD OF AN APPLICATION. APPROVED.

By Advice Letter 172, filed on June 10, 2005

SUMMARY

This resolution grants the Great Oaks' request to file its General Rate Case (GRC) by advice letter rather than by application. The request is granted as an experiment to determine whether and when the advice letter process may be a suitable alternative to the formal application process.

BACKGROUND

In Decision (D.) 04-06-018, the Commission addressed implementation of Code) § 455.2 (AB 2838, Chapter 1147, 2002, Canciamilla)[1] which requires water

---

[1] PUCode § 455.2 is copied here in its entirety. It will be referenced frequently in this Resolution.

455.2. (a) The commission shall issue its final decision on a general rate case application of a water corporation with greater than 10,000 service connections in a manner that ensures that the commission's decision becomes effective on the first day of the first test year in the general rate increase application.
(b) If the commission's decision is not effective in accordance with subdivision (a), the applicant may file a tariff implementing interim rates that may be increased by an

Footnote continued on next page

companies with greater than 10,000 service connections to file a general rate case application every three years. Great Oaks was due to file its application in July 2005 pursuant to the filing schedule in D.04-06-018 (Appendix, p.18, slip opinion).

On May 24, 2005, pursuant to Rule 48(a) of the Commission's Rules of Practice and Procedure, the ORA requested an extension of time from the Executive Director to file its Notice of Deficiency until July 8, 2005. On June 9, 2005, the Executive Director denied that request because such a delay may jeopardize timely rate relief for Great Oaks pursuant to Code § 455.2. In addition, the Executive Director told Great Oaks that it may, pursuant to Section G of D.04-06-018, request Commission authorization to file its GRC by advice letter rather than by application. On June 10, 2005, Great Oaks filed Advice Letter 172 seeking such authorization.

---

amount equal to the rate of inflation as compared to existing rates. The interim rates shall be effective on the first day of the first test year in the general rate case application. These interim rates shall be subject to refund and shall be adjusted upward or downward back to the interim rate effective date, consistent with the final rates adopted by the commission. The commission may authorize a lesser increase in interim rates if the commission finds the rates to be in the public interest. If the presiding officer in the case determines that the commission's decision cannot become effective on the first day of the first test year due to actions by the water corporation, the presiding officer or commission may require a different effective date for the interim rates or final rates.

(c) The commission shall establish a schedule to require every water corporation subject to the rate case plan for water corporations to file an application pursuant to the plan every three years. The plan shall include a provision to allow the filing requirement to be <u>waived upon mutual agreement of the commission and the water corporation</u>. (Emphasis added)

(d) The requirements of subdivisions (a) and (b) may be waived at any time by mutual consent of the executive director of the commission and the water corporation.

NOTICE

Notice of Advice Letter 172 was made by publication in the Commission's Daily Calendar. Great Oaks states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTEST TO THE ADVICE LETTER

On June 30, 2005, ORA protested Advice Letter 172 as violating PU Code § 455.2 and D.04-06-018. ORA contended that the relief requested was "inappropriate for the advice letter process" and that an evidentiary hearing and a Commission order are necessary to resolve Great Oaks' request.

In response, Great Oaks argued that the waiver option created by 455.2 (c) contemplates that variances from the application process and schedule adopted by the Commission are permissible, so long as authorized by the Commission and the water corporation. Great Oaks also points to Standard Practice U-8-W, which supports using a less-expensive informal process, "provided justification is fully set forth therein."

DISCUSSION

As required by § 455.2(c), the Commission adopted a Rate Case Plan which established a schedule requiring every Class A water corporation, including Great Oaks, to file a general rate case application on a three-year cycle. See D.04-06-018, Appendix A. As also required by that statute, the Rate Case Plan included a provision to allow the filing requirement to be waived upon mutual agreement of the Commission and the water corporation. The Rate Case Plan specified that such a proposal should be presented to the Commission via the advice letter process. Great Oaks has used this process to present its proposal to use the advice letter process rather than an application for its 2005 general rate case.

In creating the waiver process the Commission contemplated only a proposal to delay or reschedule the general rate case. The Commission did not consider the option of using the advice letter process in place of an application, as Great Oaks proposes. However, the Commission already uses the advice letter process for smaller (Class B, C, and D) water utilities. The burden of justifying the proposed rate increase is the same in both processes - the utility has the burden of proving that its proposed rate increase is necessary to maintain just

and reasonable service.

The advice letter process differs from the application process in that public events are reduced. The advice letter process does not include evidentiary hearings, and relies more on careful auditing and staff determinations of reasonable forecasts. General rate cases for small water utilities, while often including contentious issues, typically do not have enough dollars at stake to justify the expense of public litigation.

We believe that the advice letter process may be a useful alternative to the application process for certain Class A general rate case filings. As an experiment, we will therefore authorize Great Oaks to file its 2005 GRC by advice letter. The goal of this experiment is to see whether we can capture the best features of the advice letter and application processes.

Applications, and the public hearings associated with them, are a means for resolving contentious, fact-intensive utility requests. But treating every GRC as if it will be contentious and filled with factual disputes may be unrealistic, particularly in the water industry, where experience shows that many issues or entire GRCs may be settled by agreement among all parties. The potential harm of treating every GRC as if it would be litigated to the hilt is that we may be committing excess resources or committing them prematurely. The resulting inefficiencies ultimately are borne by ratepayers.

If we are able to process the Great Oaks' GRC through an advice letter, Great Oaks should save regulatory expenses. Water Division and ORA are both experienced with advice letter and application processes, so we anticipate no difficulty adjusting on their part, and in fact the managers of the respective divisions should be better able, under this experimental approach, to deploy their personnel according to their needs and Commission priorities. These are our hopes, at any rate; the experiment will put them to the test.

Great Oaks is a promising candidate for the advice letter process because it has only one district, with approximately 20,000 connections. A single district water utility with relatively few connections typically has straightforward accounting, which greatly simplifies cost and revenue forecasting. Great Oaks has two small corporate subsidiaries. One is old and inactive. The second, formed in 2005, is a small wireless internet company. While Great Oaks' subsidiaries may not be troublesome, regulated and unregulated subsidiaries can lead to contentious rate case issues. Great Oaks will still be expected to comply

with the requirements regarding Transactions with Corporate Affiliates and Unregulated Transactions contained on page 9 of the Appendix of D.04-06-018.

The advice letter process should be used to resolve as many issues as possible, and hopefully all issues. We encourage staff and the company to meet and confer to resolve issues. However, the formal process will remain an option for issues where an impasse is reached. To the extent staff identifies major issues that require a formal process, our staff should use Alternative Dispute Resolution or targeted, expedited hearings to resolve these issues. Since Great Oaks has already prepared its proposed application in anticipation of going through a GRC application under the Rate Case Plan, it should be possible for Great Oaks to quickly prepare an application narrowed to issues remaining after the informal process, should recourse to hearings be necessary.

Finally, after the Great Oaks case is completed, all involved staff shall evaluate the process to determine successes and identify areas where improvement is possible.

No hearing is necessary.

There are no disputed issues of material fact, and no hearing regarding Advice Letter 172 is necessary.

COMMENTS

Code §311(g)(1) provides that this resolution 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 parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from the date of mailing of this resolution to the parties.

Great Oaks submitted timely comments on August 12, 2005. They call to our attention the current status of subsidiaries for Great Oaks. That change is reflected in dicta.

The cities of Fontana and Claremont submitted comments on August 15, 2005. They cited concerns regarding advice letter notice. Commission notice requirements for advice letters is extensive and includes notice to affected parties in addition to posting on the Commission's calendar. They also raised the legal concerns that ORA cite in their protest. They are already addressed in the

Resolution. Fontana and Claremont also express concern about this Resolution being a precedent for other Class A water companies. It is not. This Resolution only authorizes Great Oaks to file its GRC by advice letter as an experiment. It does not prejudge an outcome since staff will evaluate the process when the case is completed. Other Class A water companies would not be authorized to file their GRC by advice letter based on this Resolution. They would have to seek a waiver, just as Great Oaks did, and affected parties would have the opportunity to protest.

The Fontana Unified School District submitted comments on August 15, 2005. They join the positions of ORA and the cities of Fontana and Claremont.

On August 15, 2005, ORA submitted comments on the draft resolution, and challenged the Commission's authority to authorize Great Oaks to file an advice letter instead of an application.[2] Section 454(b) specifically grants such authority to the Commission:

> The Commission may adopt rules it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed rate changes, the form and manner of the presentation of the showing, with or without hearing, and the procedure to be followed in consideration thereof.

Similarly, as noted above, Section 455.2 authorizes the Commission to waive entirely the GRC filing requirement. In this resolution, the Commission determines that such authority includes the right to modify the filing requirement by substituting an advice letter under the circumstances we have discussed earlier.

ORA also contends that the advice letter process relies on a lower burden

[2] ORA also argued that the comment period was insufficient because comments were due 20 days after mailing the draft resolution, rather than 30 days. Section 311(g)(1), however, does not require initial comments to be filed 30 days after mailing, but rather provides for a 30-day comment period, which the Commission has consistently interpreted as initial comments filed 20 days after mailing, and reply comments 5 days later. Approval of the resolution on August 25 is 30 days after July 26.

of proof. This is incorrect. All Commission proceedings to consider a proposed rate increase, whether application or advice letter, must meet the requirements of the same statutes, e.g., Sections 451, 454, which impose the burden of proof on the utility. See California Water Services, D.03-09-021, *mimeo*, at 11 – 16.

On August 19, 2005, Great Oaks responded to the comments of ORA, the cities of Fontana and Claremont, and the School District, and ORA.

Commentors also question whether the advice letter is the appropriate procedural vehicle for a Class A General Rate Case. The Commission has such discretion as stated in D.05-01-032. These rules apply to advice letters. The primary use of an advice letter is to transmit tariff sheet changes. An advice letter may be used for other purposes or to the extent authorized by statute or Commission order. (Appendix, Rule 1 Applicability, Paragraph 2).

FINDINGS

1. Great Oaks Water Company filed Advice Letter 172 requesting approval to file by advice letter its General Rate Case required by Decision (D.) 04-06-018.

2. Great Oaks is a Class A water company with approximately 20,000 service connections.

3. The Office of Ratepayer Advocates protested Great Oaks' Advice Letter 172.

4. The Advice Letter process is more streamlined than the application process.

5. The Commission did not consider processing a general rate case by advice letter when adopting the Rate Case Plan.

6. The Commission has authority pursuant to P.U. Code 455.2 (c) to allow a Class A water utility to process its general rate case by advice letter.

7. Great Oaks is a promising candidate for using the advice letter process because it is a small, single district utility with few contentious issues.

8. An advice letter can be converted to a formal proceeding.

9. The Water Division and ORA should coordinate staffing for evaluating the Great Oaks advice letter filing.

10. As an experiment in using the advice letter process, Great Oaks' request should be granted.

THEREFORE IT IS ORDERED THAT:

1. Great Oaks Water Company's Advice Letter 172 is approved.

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 25, 2005; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners