

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Great Oaks Water Company (U162W) for an Order establishing its authorized cost of capital for the period from July 1, 2019 through June 30, 2022.	Application 18-05-001
And Related Matters.	Application 18-05-004 Application 18-05-005 Application 18-05-006

**OPENING BRIEF OF
THE CALIFORNIA PUBLIC ADVOCATES OFFICE**

I. INTRODUCTION

The Public Advocates Office at the California Public Utilities Commission (formerly the Office of Ratepayer Advocates),¹ submits this Opening Brief on the one remaining disputed material issue in this proceeding, which is the request by Great Oaks Water Company (Great Oaks) and Liberty Utilities (Park Water) Corp. (Liberty Park) (jointly, “Applicants”) to delay the implementation of the cost of capital rates developed in this proceeding until July 1, 2019.

On September 26, 2018, the parties submitted a proposed Settlement Agreement and “Joint Motion for Adoption of All-Party Settlement Agreement” (Joint Motion). The proposed Settlement Agreement resolves all but one of the disputed issues and determines an appropriate cost of capital, rate of return on equity, cost of debt, and debt to equity structure for each of the four

¹ The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which was approved by the Governor on
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above-captioned water utilities. This Opening Brief addresses the one remaining issue that was not resolved in the proposed Settlement Agreement.

The Public Advocates Office opposes Great Oaks' and Liberty Park's request to delay implementation of the cost of capital rates on the grounds that ratepayers should obtain the benefits of the lower rates of return developed in Settlement Agreement immediately upon adoption by the CPUC, which is projected to be January 2019. Delaying the effective date results in ratepayers paying higher rates for a longer period of time, because ratepayers would continue to pay the current rates which have been determined to be too high based on current market conditions. Rather than immediately receiving the benefits of lower rates, ratepayers would continue to pay at a higher rate for about 6 months if Applicant's requests are approved. However, neither Great Oaks nor Liberty Park have met their burden of proof to provide a sufficient justification for their request. The unsubstantiated reasons given for their request to delay implementation of the lower rates are clearly outweighed by the interests of ratepayers in obtaining the benefits of lower rates immediately.

II. PROCEDURAL HISTORY

In its Application 18-05-001, Great Oaks made an unsubstantiated request² to delay implementation of the effective date of the cost of capital rates until July 1, 2019. Great Oaks' request contains no explanation or description of the good cause necessary to grant such a request. The request merely states "in accord with [the Commission's decision on this Application] decision and in conjunction with the Commission's decision on 2018 Great Oaks' general rate application," the effective date should be July 1, 2019. No further explanation is given. Presumably, July 1 would be more convenient for Great Oaks because it would

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June 27, 2018(Chapter 51, Statutes 2018).

² Great Oaks' Application 18-05-001 at 7.

coincide with the projected effective date of its GRC decision and the resulting rate changes.³

Liberty Park did not include its request to delay implementation in its Application 18-05-006, which is procedurally improper. Instead, Liberty Park made its request in the “*Joint Reply of Applicants to Protests of the Office of Ratepayer Advocates*.” Liberty Park similarly did not provide sufficient justification for its request. Instead, Liberty Park merely noted that as a result of the 20 month schedule for the consolidated proceedings, Liberty Park’s General Rate Case (GRC) would have an effective date of July 1.⁴ As with Great Oaks, it appears that Liberty Park seeks administrative ease in applying its GRC revenue requirement changes on the same date as the cost of capital changes.

III. DISCUSSION

A. Standard of Proof

Under the Public Utilities Act, the Commission’s primary purpose is to “insure the public adequate service at reasonable rates without discrimination...”⁵

Under Public Utilities Code Section 451, public utilities may demand and receive only just and reasonable charges, and they must provide “adequate, efficient, just and reasonable service” in a way that promotes the “safety, health, comfort, and convenience of [their] patrons, employees, and the public.” Under Public Utilities Code Section 454, public utilities must make a showing to the Commission that any proposed rate change is justified, and receive a finding by the Commission to that effect before making such a change. Under Public Utilities Code Sections 701 and 728, the Commission has the authority to determine what is just and reasonable, and to disallow costs not found just and reasonable. In

³ Great Oaks’ GRC application is pending; the effective date is not yet known but projected to be July 1, 2019. See A.18-07-002.

⁴ Joint Reply to ORA Protests at 6.

⁵ *Pacific Telephone and Telegraph Company v. Public Utilities Commission* (1950) 34 Cal.2d 822, 836.

particular, the Commission “has the power to prevent a utility from passing on to the ratepayers unreasonable costs for materials and services by disallowing expenditures that the Commission finds unreasonable.”⁶

The Applicants have the burden of affirmatively establishing the reasonableness of all aspects of their application, including that they are entitled to the relief they are seeking in this proceeding.⁷ The Commission has made it very clear that the applicant has the burden to justify its requests, and it is not the Public Advocates Office’s burden to disprove unsubstantiated requests. The Commission stated: “The burden rests heavily upon a utility to prove with clear and convincing evidence, that it is entitled to the requested rate relief and not upon the Commission, its staff, or any interested party to prove the contrary.”⁸

B. Applicants’ Request are Unsubstantiated

The Commission should weigh the Applicants’ requests against the interests of ratepayers. Applicants have the burden to show that their requests are reasonable and should be granted, and have not met that burden. The Public Advocates Office properly objected to this request in its Protest, and has provided testimony that demonstrates that ratepayers will continue to pay bills based upon a higher rate of return than the proposed Settlement Agreement (if the Commission adopts the Settlement Agreement) finds is no longer just and reasonable.² With regards to this request, the interests of the ratepayers outweigh the interests of the company.

The Commission should find that the Applicants have not substantiated their requests to delay implementation of the costs of capital determined to be just

⁶ *Id.*

⁷ D.12-11-051 at 8.

⁸ Public Advocates Office acknowledges that the overall burden of proof is a preponderance of the evidence; however, the evidence must be clearly presented in the Application not in rebuttal testimony or briefs. See D.04-03-039.

² Public Advocates Office Testimony of Dawadi at 15.

and reasonable. Applicants have not provided hardly any explanation to justify their requests, other than to point out that it would be concurrent with projected GRC rate adjustment dates. Apparently, the reason could be that it is more administratively easy to do that, but the Applicants do not make this argument clearly.

As discussed above, the Commission has the duty to insure that rates are just and reasonable. Here, if Applicants are permitted to continue to charge rates higher than what have been determined to be reasonable for an extended period of time, ratepayers would be paying rates based on costs of capital that are unjustified and unreasonable. Applicants have not provided any good cause why they should be allowed to do so.

C. Liberty Park's Request is Procedurally Improper

Typically, an application must include all of the relevant requests that a company makes. As discussed above, an application must contain a clear description of its request. The Commission's Rules of Practice and Procedure specifically provide that: "All applications shall state clearly and concisely the authorization or relief sought."¹⁰ However, Liberty Park did not include its request to delay implementation of the cost of capital rates in its application, instead making its request in the "*Joint Reply of Applicants to Protests of the Office of Ratepayer Advocates*." Therefore, Liberty Park's request does not conform to the applicable Commission rules.

Similarly, Liberty Park did not justify its request or substantiate the need for it in any way. Instead, Liberty Park states that it should be consolidated with its GRC schedule, without any explanation as to why this is necessary or beneficial. As described above, ratepayers' interests outweigh the utilities' interests here.

¹⁰ Commission Rules of Practice and Procedure, Rule 2.1.

D. Commission Decisions are Typically Effective Immediately

Typically, Commission decisions are effective immediately and are not delayed. This is especially true when the proceeding determines the prospective reasonableness of rates. The ratepayers should receive the benefits of just and reasonable rates immediately.

For example, in the recent consolidated proceeding involving four Class A water companies (A.17-04-001 et al.) the Commission's final decision was "effective immediately."¹¹ Anticipating a delay in adopting a final decision, the Commission required the four Class A water companies to track the ratepayer savings resulting from lower costs of capital back to the beginning of the year and issue a refund to ratepayers in the amount of the difference.¹² The Commission did not delay implementation of the cost of capital rates so that the effective date would coincide with the water utilities' GRC dates. There was simply no good cause to do so.

Great Oaks and Liberty Park cite to the GRC plan decision for water utilities, which provides guidelines regarding how this proceeding is submitted and procedures for determining an appropriate cost of capital rate. However, that decision (D.07-05-062) clearly and unequivocally stated that the ALJ and Assigned Commissioner will determine a procedural schedule and that the cost of capital rates will be developed and implemented immediately. The Commission stated:

The procedural schedule for these cost of capital proceedings will be determined by the assigned ALJ or assigned Commissioner at the first consolidated proceedings, in May 2008 and May 2009. The Commission will process these cost of capital proceedings in a timely fashion and promptly incorporate the results into pending or existing rates.¹³

¹¹ D.18-03-035 at 28.

¹² *Id.* at 27.

¹³ (Emphasis added.) D.07-05-062 at 15-16.

It is unequivocally clear that the Commission intended for water cost of capital changes to go into effect immediately, which is typical for ratemaking proceedings. There is no justification to change course in this proceeding.

E. “Consistency” With GRC Implementation Dates Is Not a Compelling Reason to Grant the Request

As stated above, the water Rate Case Plan decision and subsequent water Cost of Capital proceedings went into effect immediately upon the issuance of the decision. This is the standard practice in ratemaking proceedings and consistent with the Commission’s duty to insure just and reasonable rates.

Great Oaks and Liberty Park must therefore provide a compelling reason with evidence that they have special circumstances that require deviation from norm. They have failed to do so. Applicants have failed to provide any evidence that it would be overly expensive, burdensome, or overly time-consuming to put the cost of capital adjustment into effect in January 2019. Nor have they demonstrated that rates effective July 1, 2019 are somehow more efficient or easy for them to administer.

In any event, even assuming for argument’s sake that Great Oaks and Liberty Park had provided some evidence that substantiates their request, this need must be balanced against: 1) the interests of the ratepayers in reasonable rates, and 2) the Commission’s duty to insure that rates are not unjust and unreasonable. Mere “consistency” with GRC effective dates is not a compelling reason to grant the request, when weighed against the duty of the Commission to ensure rates are just and reasonable and the interests of ratepayers.

The proposed Settlement Agreement determines that the authorized costs of capital should be lower than they are currently. Delaying implementation of lower costs of capital for 6 months will cost ratepayers millions of dollars in unreasonable rates. The utilities’ interest in consistency does not outweigh the substantial benefit to ratepayers that they would lose during the delay.

IV. CONCLUSION

There can be no doubt that, if the proposed Settlement Agreement resulted in higher costs of capital, the utilities would request that they become effective immediately. In fact, the proposed Settlement Agreement determines that a lower cost of capital is just and reasonable, which means that ratepayers' rates will go down. Great Oaks and Liberty Park fail to provide a compelling reason why ratepayers should not receive the benefit of these lower rates immediately. Instead, they provide thin and unsubstantiated justifications that do not meet the burden of proof for Commission applications. The Commission has a long-standing policy that ratemaking decisions become effective immediately, and they have not provided any compelling reason to deviate from the standard practice. The costs of capital changes calculated in the proposed Settlement Agreement should be effective immediately and these Applicants should "promptly incorporate the results into pending or existing rates" as required by the GRC plan decision.¹⁴

Respectfully submitted,

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¹⁴ D.07-05-062 at 15-16.