

PROPOSED RESOLUTION

Resolution W-5226
WD

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7/23 10am

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION W-5226
August 6, 2020

RESOLUTION

(RES. W-5226) GOLDEN STATE WATER COMPANY, SUBURBAN WATER SYSTEMS, SAN GABRIEL VALLEY WATER COMPANY, AND CALIFORNIA WATER SERVICE COMPANY. THIS RESOLUTION REVERSES WATER DIVISION'S REJECTION OF GOLDEN STATE WATER COMPANY'S, SUBURBAN WATER SYSTEMS', AND SAN GABRIEL VALLEY WATER COMPANY'S REQUESTS AND GRANTS THE REQUEST OF CALIFORNIA WATER SERVICE COMPANY TO ESTABLISH MEMORANDUM ACCOUNTS FOR COSTS RELATED TO POLYFLUOROALKYL SUBSTANCES.

By Golden State Water Company's Advice Letter 1795-W-A, Suburban Water System's Advice Letter 343-W-A, San Gabriel Valley Water Company's Advice Letter 545-W, and California Water Service Company's Advice Letter 2376; filed on October 31, 2019, December 6, 2019, January 7, 2020, and March 4, 2020, respectively.

SUMMARY

This Resolution responds to requests by Golden State Water Company (Golden State), Suburban Water Systems (Suburban) and San Gabriel Valley Water Company (San Gabriel), collectively "the Utilities", for review of Water Division's rejection of Golden State's Advice Letter No. 1795-W-A, Suburban's Advice Letter No. 343-W-A, and San Gabriel's Advice Letter No. 545-W, each of which requested the establishment of a Polyfluoroalkyl Substance Memorandum Account (PFASMA). This Resolution reverses Water Division's disposition rejection of Advice Letters 1795-W-A, 343-W-A, and 545-W. In addition, this Resolution grants the request of California Water Service Company

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(Cal Water) in Advice Letter 2376 to establish a PFASMA that is currently pending with Water Division.

BACKGROUND

Golden State Water Company (Golden State), Suburban Water Systems (Suburban), San Gabriel Valley Water Company (San Gabriel), and California Water Service Company (Cal Water) each requested to establish a Polyfluoroalkyl Substance Memorandum Account (PFASMA) to recover costs they expect to incur including:

- Laboratory testing and monitoring – due to the specialized nature of the analyses (new and developing methods, low detection limits and sensitivity for sample contamination) the cost for each analysis is much greater than routine monitoring tests.
- Customer/public notifications
- Alternative sources of supply
- Chemical and operating costs for treatment
- Special studies related to treatment options, engineering design, and distribution system hydraulic modeling
- Incremental plant investment for treatment facilities to remove PFAS, including potential Granular Activated Carbon (GAC) and/or Ion Exchange treatment processes

Polyfluoroalkyl Substances

On August 23, 2019, the California State Water Resources Control Board (SWRCB) announced updated guidelines for local water agencies to follow in detecting and reporting the presence of perfluorooctanoic (“PFOA”) and perfluorooctanesulfonic acid (“PFOS”) in drinking water.¹ The SWRCB also announced it has begun the process of establishing regulatory standards for these chemicals. The updated state guidelines lower the current notification levels from 14 parts per trillion (“ppt”) to 5.1 ppt for PFOA and from 13 ppt to 6.5 ppt for PFOS. Notification levels are a precautionary health-based measure for concentrations in drinking water that warrant notification and further monitoring and assessment. Public water systems are encouraged to test their water for contaminants with notification levels, and in some circumstances may be

¹ State Water Board Media Release, August 23, 2019:

https://www.waterboards.ca.gov/press_room/press_releases/2019/pr082319_pfoa_pfes_guidelines_news_release.pdf

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ordered to test. If the systems do test, they are required to report exceedances to their governing boards and the SWRCB and are urged, but not required, to report this information to customers.

On July 31, 2019, California Governor Gavin Newsom approved Assembly Bill No. 756 (“AB 756”) which authorizes the SWRCB to order a public water system to monitor for PFAS more broadly. AB756 took effect on January 1, 2020. Under AB 756, if PFAS concentrations above the response level are detected at a given water source, water systems are required to either take that source out of service or notify their customers of the response level exceedance. A response level is set higher than a notification level and represents a recommended chemical concentration level at which water systems consider taking a water source out of service or provide treatment. On February 6, 2020, the SWRCB lowered the response levels to 10 ppt for PFOA and 40 ppt for PFOS, down from a combined 70 ppt for both chemicals.

In addition to the updated notification and response levels, the SWRCB has requested that the California Environmental Health Hazard Assessment (“OEHHHA”) develop public health goals (“PHGs”) for both PFOA and PFOS, the next step in the process of establishing regulatory standards, known as maximum contaminant levels (MCLs), in drinking water. Other chemicals in the broader group of PFAS may be considered later, either individually or grouped, as data permits. Unlike other states, California has not developed its own MCLs at this time.²

The SWRCB is currently conducting a statewide assessment to determine the scope of contamination by PFAS, including PFOA and PFOS, in water systems and groundwater. In the first phase, pursuant to Health and Safety Code section 116400, in March 2019 public water systems were ordered to sample (quarterly for one year) about 600 drinking water supply wells located near airports and landfills, where contamination is more likely, and near locations where PFAS was previously found under the federal Environmental Protection Agency’s Unregulated Contaminant Monitoring Rule 3. Following this initial phase, the assessment will likely focus on sampling water sources near industrial sites and at wastewater treatment facilities. Currently, there are only a few labs in California that are accredited for analysis of

² New Jersey was the first state to establish regulatory standards for PFAS, with an MCL of 14 ppt for PFOA in 2017 and an MCL 13 ppt for PFOS following. Colorado, Connecticut, Michigan, and Rhode Island have established regulatory standards of 70 ppt for the combined concentrations of several PFAS chemicals. More information can be found through the Interstate Technology Regulatory Council at <https://pfas-1.itrcweb.org/fact-sheets/>.

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PFAS which causes public water systems to pay for a rushing fee to meet the criteria directed in the order from the SWRCB.

Golden State Water Company

On March 15, 2019, the SWRCB ordered Golden State to begin collecting PFOA and PFOS samples on 19 of its 235 wells as part of the Phase 1 initiative, pursuant to Health and Safety Code section 116400 (quarterly for one year). Golden State determined that Imperial Well #2 in the Norwalk District, contained PFOS levels that exceeded the response level and in July 2019, the well was taken offline. As a result of exceeding the response levels, notification letters were sent to the SWRCB, California Public Utilities Commission, and customers on August 21, 2019.

On October 31, 2019, Golden State submitted Advice Letter (AL) 1795-W requesting to establish a PFASMA to recover the costs for collecting and submitting samples to specialized testing facilities, customer/public notifications, chemical and operating costs for treatment, and special studies related to treatment options.

On November 18, 2019, the Public Advocates Office (Cal PA) requested to extend the protest deadline from November 20th to December 4th. Water Division granted the extension and Cal PA did not file a protest. On December 5th, a supplemental advice letter, AL 1795-W-A was submitted to Water Division, which included updates discussed between Cal PA and Golden State. Water Division rejected Golden State's AL 1795-W-A by disposition letter pursuant to General Order 96-B, General Rule 7.6.1 and Water Industry Rule 7.3.2(5) on January 17, 2020. Golden State filed a Request for Review of Water Division's Disposition on January 27, 2020.

Suburban Water Systems

From August to November of 2019, Suburban performed voluntary initial and confirmation of its four Whittier system wells. All four wells detected levels of PFOS and PFOA that were above the notification level but below the response level. Consequently, Suburban sent notification letters to the SWRCB and the CPUC on December 19, 2019.

On December 6, 2019, Suburban submitted AL 343-W, requesting authorization to open a PFASMA; AL 343W was supplemented by 343-W-A on December 18, 2019 to include an inadvertently missing sheet. Water Division requested additional information related to well testing and cost predictions from Suburban on December 12, 2019. Water Division also requested the results of Suburban's voluntary well tests on December 16,

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2019; Suburban timely responded to both data requests. On December 18, 2019, the Public Advocates' Office requested a 2-week extension of the protest period which Water Division granted. On January 6, 2020, Water Division suspended AL 343 as additional time beyond the initial review period was required; the Public Advocates' Office then timely protested on January 9, 2020. Water Division rejected Suburban's AL 344-W-A by disposition letter pursuant to General Order 96-B, General Rule 7.6.1 and Water Industry Rule 7.3.2(5) on January 17, 2020. Suburban filed a Request for Review of Water Division's Disposition on January 27, 2020.

San Gabriel Valley Water Company

On March 15, 2019, the SWRCB ordered San Gabriel to begin collecting PFOA and PFAS samples from eight of its 66 active wells, pursuant to Health and Safety Code section 116400 (quarterly for one year). San Gabriel also voluntarily sampled its remaining wells and found concentrations of PFOA and PFAS at concentrations above the notification level but below the response level at Wells W1C, W6C, and W6D.

Consequently, notification letters were sent to the SWRCB and CPUC on December 19, 2019. On February 20, 2020, San Gabriel once again notified the Commission of PFAS detections above the notification levels but below the response levels, this time at Wells 2D, 2E, and 2F.

On January 7, 2020, San Gabriel submitted AL 545-W, requesting authorization to open the PFASMA. Water Division requested additional information related to well testing and cost predictions from San Gabriel on January 13, 2019. On January 17, 2020, the Public Advocates' Office requested a 2-week extension of the protest period; this was not granted because Water Division rejected San Gabriel's AL 545-W by disposition letter pursuant to General Order 96-B, General Rule 7.6.1 and Water Industry Rule 7.3.2(5) the same day. San Gabriel filed a Request for Review of Water Division's Disposition on January 27, 2020.

California Water Service Company

On March 15, 2019, the SWRCB ordered Cal Water to begin collecting PFOA and PFOS samples on 23 of its 700 plus wells as part of the Phase 1 initiative, pursuant to Health and Safety Code section 116400 (quarterly for one year). In AL 2376, Cal Water did not report any test results from the 23 wells that exceeded either the response level or notification level for PFOA and PFOS.

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On March 4, 2020, Cal Water submitted AL 2376, requesting authorization to open a PFASMA. On March 19, 2020, the Public Advocates' Office submitted a timely protest to AL 2376. Cal Water responded to Public Advocates' protest on March 26, 2020. Advice Letter 2376 was suspended by Water Division on April 2, 2020 and currently remains a pending matter.

NOTICE AND PROTESTS

In accordance with General Rules 4.3 and 7.2 and Water Industry Rule 4.1 of General Order 96-B, Golden State served copies of Advice Letter (AL) 1795-W to adjacent utilities and other parties requesting such notification on October 31, 2019 with AL-1795A being served on December 5, 2019. Suburban served AL 343-W on December 6, 2019, San Gabriel served AL 545-W on January 7, 2020, and Cal Water served AL 2376 on March 4, 2020. In accordance with Water Industry Rule 3.3 (*id.*), Golden State, San Gabriel, Suburban, and Cal Water also posted the advice letters on their respective websites.

No protests were received in response to the filing for Golden State AL 1795-W-A and San Gabriel AL 545-W. Cal PA's January 17, 2020 request for a two-week extension of the protest period for San Gabriel AL 545-W was rendered moot by Water Division disposition letter of AL 545-W on the same day.

On December 18, 2019, the Public Advocates' Office (Cal PA) requested a two-week extension of the protest period for Suburban's Advice Letter 343. Cal PA then timely protested Advice Letter 343 on January 9, 2020.

On March 19, 2020 Cal PA timely protested Cal Water's AL 2376.

REQUEST FOR REVIEW

By letter, submitted in accordance with Section 7.7.1 of G.O.96-B, the Utilities request Commission review of Water Division's disposition of Golden State's AL 1795-W-A, Suburban's AL 343-W-A, and San Gabriel's AL 545-W. Golden State, Suburban, and San Gabriel outline the specific grounds on which they contend that Water Division's action is erroneous, as summarized below.

1. The rejection of each utility's advice letter does not serve the interests of ratepayers by way of delaying remediation of PFAS contamination.

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2. Water Division failed to consider the necessary and substantial incremental costs that are expected to be incurred.
3. The full extent of costs that will be incurred is difficult to forecast at this time but are not speculative and will very likely be substantial.
4. Water Division's claims that any needed treatment costs will not occur before the Utilities' next respective rate cases are not true.
5. Water Division fails to acknowledge that any incremental PFAS-related costs incurred prior to the Utilities' next respective test years can never be recovered if the ALs are rejected.

Subsequent to Water Division's rejection of the three Advice Letters, Cal PA requested the opportunity to respond to the Utilities' Requests for Review, which Water Division granted.

DISCUSSION

As the utilities note, the Commission has previously authorized memo accounts in the interests of other public policy concerns even if the four conditions usually required for a memorandum account are not met. Due to the significant public health concerns associated with PFAS, we believe the utilities have sufficiently made the case that they should be able to record a certain selection of the requested costs to memorandum accounts, to be subject to future recovery.

The emerging PFAS situation certainly represents an exceptional circumstance not under the utilities' control. While the utilities have some flexibility in allocating their budgets, many PFAS-related costs, such as testing and monitoring, alternative sources of supply, and customer notices merit special attention. These costs could not have been foreseen in the utilities' last respective general rate cases and will occur before the next rate case—indeed, the utilities have already begun incurring many of these costs. Even if these operating expenses are *de minimis* at this time as Water Division argues, PFAS-related expenses have the potential to become significant in the near term, given the rapidly changing regulatory landscape around this class of chemicals. It is in the ratepayer interest to ensure the utilities are supported in responding to this public health concern and provide safe, clean, and affordable water service.

Memorandum account treatment provides the utilities an incentive to be proactive in their response by way of testing and monitoring and procurement of alternative water

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sources. At the same time, as the memo account process does not guarantee recovery of costs, it encourages the utilities to only incur those costs which are necessary and prudent.

This resolution authorizes the utilities to establish PFASMA's for a limited selection of the requested PFAS-related costs. Specifically, the utilities are authorized to record PFAS-related operating expenses, including testing and monitoring; customer and public notifications; and alternative sources of supply, to the extent that the utilities are not already able to recover these expenses. Given the large amounts of money associated with construction of treatment plant, and the current lack of an MCL to determine the appropriate levels of treatment, we find that increases in rate base should still be requested through the application process, whether through each utility's next rate case or a separate application.

COMMENTS

Public Utilities Code section 311(g)(1) requires that a proposed resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution.

Comments to this draft resolution were received from Golden State, California Water Association (CWA), and the Public Advocates' Office. Golden State's and CWA's comments were largely in support of the resolution, while encouraging the Commission to handle applications for PFAS-related capital projects with appropriate urgency. Public Advocates' comments also supported the resolution, noting that the Commission is correct to exclude rate base costs from the PFASMA's. Public Advocates also proposed two factual corrections to the resolution, which have been incorporated above.

FINDINGS AND CONCLUSIONS

1. By AL 1795-W and 1795-W-A, filed on October 31, 2019 and December 5, 2019, respectively, Golden State Water Company (Golden State) requested to establish a Polyfluoroalkyl Substances Memorandum Account (PFASMA).
2. By AL 343-W and 343-W-A, filed on December 6, 2019 and December 18, 2019, respectively, Suburban Water Systems (Suburban) requested to establish a PFASMA.
3. By AL 545, filed on January 7, 2020, San Gabriel Valley Water Company (San Gabriel) requested to establish a PFASMA.

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4. By AL 2376, filed on March 4, 2020, California Water Service Company (Cal Water) requested to establish a PFASMA.
5. On January 17, 2020, Water Division rejected ALs 1795-W-A, 343-W-A, and 545-W because Golden State, Suburban, and San Gabriel had not satisfied the four conditions set forth in Decision 02-08-054 for the establishment of a memorandum account.
6. On January 27, 2020, the Utilities each requested Commission review of Water Division's rejection of their respective advice letters.
7. Cal Water's pending AL 2376 raises the same issues posed in the rejected advice letters submitted by Golden State, Suburban, and San Gabriel.
8. The Department of Drinking Water (DDW) has established regulatory limits for PFAS in the form of Notification and Response Levels.
9. Given the public health concerns associated with per- and polyfluoroalkyl substances (PFAS), it is in the ratepayers' interest to allow the utilities to recover operating expenses related to PFAS.
10. The utilities have made the showing that regulatory developments related to PFAS represent an event of an exceptional nature that is out of the utilities' control.
11. The utilities have made the showing that PFAS-related operating expenses including laboratory testing and monitoring, customer notice, and alternative sources of supply cannot have been reasonably foreseen in the utilities' last respective general rate cases and will occur before their next scheduled rate cases.
12. The appropriate place to request rate increases to cover incremental plant costs is an application where the utility can make the showing that the incremental plant is necessary to provide safe water service.
13. Cal Water's AL 2376 should be resolved in this Resolution consistent with resolution of the advice letters for Golden State, Suburban, and San Gabriel.

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THEREFORE, IT IS ORDERED THAT:

1. Water Division's rejections of Golden State Water Company's Advice Letter No. 1795-W-A, Suburban Water Systems' Advice Letter No. 343-W-A, and San Gabriel Valley Water Company's Advice Letter No. 545-W are reversed.
2. California Water Service Company's Advice Letter No. 2376 is approved consistent with Water Division's approval of the advice letters in Ordering Paragraph No. 1 and as discussed in this Resolution.
3. Golden State Water Company, Suburban Water Systems, San Gabriel Valley Water Company, and California Water Service Company are authorized to establish memorandum accounts for tracking of incremental operating costs related to per- and polyfluoroalkyl substances (PFAS), but should file applications to request increases in rate base for incremental plant and capital costs.

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 6, 2020; the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director

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Attachments

Service Lists, emails, USPS

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