

Decision 20-08-002 August 6, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of California American Water Company (U210W), California Water Service Company (U60W), Golden State Water Company (U133W), Great Oaks Water Company (U162W), Liberty Utilities (Apple Valley Ranchos Water) Corp. (U346W), Liberty Utilities (Park Water) Corp. (U314W), San Gabriel Valley Water Company (U337W), San Jose Water Company (U168W) and Suburban Water Systems (U339W) for Authority to Establish the California Consumer Privacy Act Memorandum Account.

Application 19-12-003

DECISION DISMISSING APPLICATION FOR AUTHORITY TO ESTABLISH CALIFORNIA CONSUMER PRIVACY ACT MEMORANDUM ACCOUNTS

Summary

This decision grants California American Water Company, California Water Service Company, Golden State Water Company, Great Oaks Water Company, Liberty Utilities (Apple Valley Ranchos Water) Corporation, Liberty Utilities (Park Water) Corporation, San Gabriel Valley Water Company, San Jose Water Company and Suburban Water Systems' (Joint Applicants) *Motion to Dismiss Application Without Prejudice* on the grounds that many of the Joint Applicants have determined that the authority requested in the application is no longer a priority. Subsequent to adoption of this decision, any of the Joint

Applicants may submit an advice letter to the Commission's Water Division requesting authority to establish a memorandum account to track incremental costs stemming from the California Consumer Privacy Act.

This proceeding is closed.

1. Background

On December 9, 2019, the California American Water Company, California Water Service Company, Golden State Water Company, Great Oaks Water Company, Liberty Utilities (Apple Valley Ranchos Water) Corporation, Liberty Utilities (Park Water) Corporation, San Gabriel Valley Water Company, San Jose Water Company and Suburban Water Systems (Joint Applicants) filed Application (A.) 19-12-003 for *Authority to Establish the California Consumer Privacy Act Memorandum Account* (Application). The Joint Applicants sought authority from the Commission to establish memorandum accounts to track incremental costs related to compliance with the California Consumer Privacy Act of 2018 (CCPA).

The Application stated that compliance with the CCPA required each of the Joint Applicants to develop and implement systems to map, track and report on the personal information of customers and other persons that it collects and shares. The Application stated that the Joint Applicants were already incurring compliance costs and expected to incur more in 2020 but that the full cost of compliance was unknown and dependent on the number of requests received and the amount of labor needed to fulfill those requests.¹

¹ Joint Application, filed December 9, 2019, at 8.

A prehearing conference was held on February 11, 2020 and an Assigned Commissioner's Scoping Memo and Ruling containing a procedural schedule was issued on March 9, 2020. An Administrative Law Judge's (ALJ) procedural email modified that schedule on March 26, 2020 and again on April 7, 2020. On March 17, 2020 Water Rate Advocates for Equity, Transparency and Sustainability (WRATES) filed a *Motion to Dissociate San Jose Water Company from the Other Eight Members of Joint Parties in the Joint Application A1912003* (WRATES' Motion). On April 1, 2020, the Joint Applicants responded to the WRATES' Motion, opposing it. However, the response noted that there are "differences among the circumstances and needs of the several Joint Applicants, large and small, with respect to their responses to the enactment and more recent amendment of the CCPA and the [Attorney General's] evolving regulations,"² and that these differences might prove relevant to the requests by each of the Applicants to establish memorandum accounts to record incremental CCPA compliance costs.³

On April 8, the Joint Applicants filed a *Motion to Dismiss Application Without Prejudice* (Motion). The Motion states that insights developed when responding to data requests from the California Public Advocates Office (Cal Advocates), receipt of fewer customer requests for information than anticipated, and reassessment of priorities in the context of the COVID-19 crisis had led many of the Joint Applicants to prefer to devote their limited resources

² Joint Response to WRATES' Motion, filed April 1, 2020, at 2.

³ *Id.*, at 3.

to other areas.⁴ However, the Motion states that at least one of the Joint Applicants wished to pursue a request for authority to establish a CCPA memorandum account by submitting an advice letter. For this reason, the Joint Applicants request that the Commission grant their Motion without prejudice to allowing any of the Joint Applicants to submit an advice letter to Water Division seeking authorization to establish a memorandum account comparable to that sought in the Application.

On April 8, 2020, the Assigned ALJ sent a procedural email suspending the procedural schedule to allow parties to respond to the Motion. No party responded to the Motion. On April 30, 2020, the Assigned ALJ issued an email ruling directing parties to respond within 10 days to indicate if they stipulate that they do not oppose the Motion. On April 30, 2020, Cal Advocates stipulated that it does not oppose the Motion. On April 30, 2020, WRATES responded that it does not oppose the Motion. However, WRATES also indicated a limited ability to participate in Commission proceedings due to the COVID-19 crisis. For this reason, WRATES requested that the Commission restrict resubmittal of requests by any of the Joint Parties for authorization to establish a CCPA memorandum account until after the State of California Public Health Crisis is withdrawn.

On May 13, 2020, the Assigned ALJ issued an email ruling denying WRATES' *Motion to Dissociate San Jose Water Company from the Other Eight Members of Joint Parties in the Joint Application A1912003*.

⁴ Motion, filed April 8, 2020, at 4.

2. Issues Before the Commission

The issues before the Commission in this decision are:

- Should the Commission grant the Motion and, if so, should the Motion be granted without prejudice to allowing any of the Joint Applicants to submit advice letters with Water Division seeking authorization for their respective companies to establish memorandum accounts comparable to those for which the Application sought authorization?
- If the Motion is granted without prejudice, should the Commission restrict resubmittal of requests by any of the Joint Parties for authorization to establish a CCPA memorandum account until after the State of California Public Health Crisis is withdrawn?

3. Discussion

This decision grants the Motion submitted by the Joint Applicants. Given the constraints on resources triggered by the COVID-19 crisis, the submittal of fewer requests than expected for personal information by customers of the Joint Applicants, the existence of an alternate pathway for the Joint Applicants to seek the requested authority via Water Division's Standard Practice U-27-W, and the lack of opposition to the Motion, it is reasonable to dismiss this application and to do so without prejudice to subsequently allowing any of the Joint Applicants to submit advice letters with Water Division seeking comparable authority to establish a CCPA memorandum account. This outcome provides for the best use of limited personnel resources by parties and the Commission while also allowing flexibility for any Joint Applicants experiencing incremental costs to implement the CCPA to seek authority to establish a CCPA memorandum account with the Commission's Water Division subsequent to adoption of this decision. The Water Division Standard Practice U-27-W sets forth the

requirements and procedures under which regulated companies may seek authority to establish memorandum accounts via advice letter.⁵

We do not restrict submittal of an advice letter by any of the Joint Parties for authorization to establish a CCPA memorandum account until after the State of California Public Health Crisis is withdrawn as requested by WRATES. Given the uncertain and varied nature of the current “reopening” of the California economy, doing so would not provide enough certainty on the timeline by which a Joint Applicant could pursue the desired authority. We are sympathetic to constraints faced by WRATES due to the COVID-19 crisis but believe that the Commission’s General Order 96-B governing advice letter processes provides sufficient flexibility for WRATES’s participation.⁶ General Order 96-B allows 20 days for entities to protest an advice letter and allows a Commission industry division to suspend an advice letter in order to dispose of it subsequent to an initial 30 day period if needed. If WRATES is unable to submit a protest to an advice letter by any Joint Applicant seeking authority to establish a CCPA memorandum account during the 20-day period, it may submit to Water Division a request for an extension of time or leave to late file a protest letter. These protections should provide for sufficient flexibility to allow WRATES to participate in this Commission process if it wishes.

⁵ Water Division’s Standard Practice U-27-W is available here:

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M090/K002/90002198.PDF>

⁶ General Order 96-B is available here: <https://www.cpuc.ca.gov/General.aspx?id=6442461367>

4. Comments on Proposed Decision

The proposed decision of ALJ Fogel in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed on the proposed decision.

5. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Cathleen A. Fogel is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. A.19-12-003, filed on December 9, 2019, states that the Joint Applicants were already incurring CCPA compliance costs and expected to incur more in 2020, but that the full cost of compliance was unknown and dependent on the number of requests received and the amount of labor needed to fulfill those requests.

2. The Joint Applicants' April 8, 2020 Motion states that insights developed responding to data requests, receipt of fewer customer requests for information than anticipated, and reassessment of priorities in the context of the COVID-19 crisis led many of the Joint Applicants to prefer to devote their limited resources to areas other than A.19-12-003.

3. Water Division Standard Practice U-27-W sets forth the requirements and procedures under which regulated companies may seek authority to establish memorandum accounts via advice letter.

4. The Joint Applicants' Motion was unopposed.

5. The Commission's General Order 96-B governing advice letter processes provides sufficient flexibility for parties' participation in review of advice letters.

Conclusions of Law

1. The Commission should dismiss without prejudice A.19-12-003 and allow any Joint Applicant to submit an advice letter to the Commission's Water Division requesting authority to establish a memorandum account to track incremental costs stemming from the California Consumer Privacy Act.

O R D E R

IT IS ORDERED that:

1. The *Motion to Dismiss Application Without Prejudice* filed by the California American Water Company, California Water Service Company, Golden State Water Company, Great Oaks Water Company, Liberty Utilities (Apple Valley Ranchos Water) Corporation, Liberty Utilities (Park Water) Corporation, San Gabriel Valley Water Company, San Jose Water Company and Suburban Water Systems is granted.

2. Application 19-12-003, filed on December 9, 2019 by California American Water Company, California Water Service Company, Golden State Water Company, Great Oaks Water Company, Liberty Utilities (Apple Valley Ranchos Water) Corporation, Liberty Utilities (Park Water) Corporation, San Gabriel Valley Water Company, San Jose Water Company and Suburban Water Systems (Joint Applicants), is dismissed without prejudice. Subsequent to adoption of this decision, any Joint Applicant may submit an advice letter to the Commission's Water Division requesting authority to establish a memorandum account to track incremental costs stemming from the California Consumer Privacy Act.

3. Application 19-12-003 is closed.

This order is effective today.

Dated August 6, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners