

Decision 11-01-015 January 13, 2011

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

Peter A. Bresler, Margaret J. Bresler,  
Rod Baker, Carol Baker, Don Burden,  
Pam Burden, Lenny Castellanta,  
Michelle Castellanta, Donald Crawford,  
Sharon Crawford, Ted Ealand,  
Andrea Gibbs, John Gibbs, Ken Kellet,  
Darlene Kellet, Michael Landino,  
Bettye Landino, Debra Lehman,  
Ken Lehman, Remy Lejeune, Pierre Lejeune,  
John A. Macdonald, Barbara Macdonald,  
Alma May, Bobby McKee, Anita McKee,  
Jim Parks, Linda Peoples, David Peoples,  
Mike Preach, Marie Preach, Tatsuko Radke,  
Thomas Radke, Brenda Robinson,  
Denise Robson, Curtis A. Russell,  
Gloria J. Russell, Leroy Spencer,  
Michelle Spencer, Corbie von Stein,  
Richard von Stein, Marilyn Wadsworth,  
Fred Wadsworth,

Complainants,

vs.

Golden State Water Company (U133W),

Defendant.

Case 10-09-009  
(Filed September 20, 2010)

**DECISION DISMISSING COMPLAINT  
AGAINST CONSERVATION RATE DESIGN**

**DECISION DISMISSING COMPLAINT  
AGAINST CONSERVATION RATE DESIGN**

**1. Summary**

This decision dismisses a complaint filed by a group of ratepayers in Los Osos against the Golden State Water Company (Company). The Complainants allege that the utility's tiered conservation water rates, implemented as a pilot initiative starting in September of 2009 pursuant to a decision of the Commission, are unfair and discriminatory, and that the notice provided in advance by the Company was inadequate. Golden State Water Company responds that the complaint, in lieu of stating a violation of the Public Utilities Code, takes issue with the Commission's conservation rate design policy as implemented in Los Osos, and that the Company gave requisite notice to the Complainants. The Company's motion to dismiss is granted on the ground that the Complaint is untimely. The Complainants are informed that the Company's pilot tiered conservation rate design will be subject to review, protest and comment in the context of the Company's next company-wide General Rate Case that begins in July, 2011.

## **2. Background**

### **2.1. Commission's Adoption of Pilot Tiered Conservation Rate Designs**

Water conservation is an explicit objective of the Commission,<sup>1</sup> the Governor,<sup>2</sup> and the State of California.<sup>3</sup> To meet this objective the Commission has mandated that the larger investor-owned water utilities implement a series of pilot conservation rate designs involving increasing-block tiered water rates that impose higher rates as the volume of use rises past certain thresholds.<sup>4</sup> These pilot designs are to be reviewed in each of the respective water utilities' General Rate Case (GRC).<sup>5</sup> The pilot conservation rate design for the Golden State Water Company's (Company) Los Osos district, adopted in D.09-05-005, <sup>6</sup> has three tiers. The company-wide GRC at which it will be subject to review is scheduled to begin in July 2011.

---

<sup>1</sup> Water Action Plan (December 15, 2005), at 7; also, *see* Decision (D.) 08-02-036 and D.08-08-030.

<sup>2</sup> In early 2008 Governor Schwarzenegger set a goal of 20% statewide per capita urban water use reduction by 2020. In late 2009 water conservation legislation was enacted, Senate Bill 7 (7<sup>th</sup> Ex. Sess.), adding new provisions (Sustainable Water Use and Demand Reduction) as §§ 10608-10853 of the California Water Code.

<sup>3</sup> D.08-08-030.

<sup>4</sup> *See* D.08-08-030, in Phase 1B of Investigation (I.) 07-01-022 (water conservation proceedings).

<sup>5</sup> GRCs are conducted on a 3-year cycle.

<sup>6</sup> Application (A.) 08-09-010.

## **2.2. Procedural History**

The verified complaint, joined by 45<sup>7</sup> individual ratepayers residing in Los Osos, was filed on October 4, 2010. The answer by the Company was filed on November 3, 2010, as was its motion to dismiss the complaint. No response to the motion was filed.<sup>8</sup>

## **3. Issue Before the Commission**

The issue posed by the motion to dismiss is whether the complaint states a cause of action upon which relief can be given.

## **4. Discussion**

As summarized in the Complaint itself, the complaint alleges<sup>9</sup> a/an:

- Failure by [Company] to provide adequate notification and communication with the impacted customers of the huge increase in water rates;
- Unfairness of the tiered rates in targeting homeowners with yard landscaping without regard for the other high water users in the Los Osos valley;
- Failure of the tiered rate structure to make allowances for past usage patterns, or efforts at conservation;
- Increased risk of fire damage due to loss of yard irrigation;
- Discrimination against large families and high occupancy residences; and
- Lack of a critical need for draconian water conservation mandates in the Los Osos valley at this time.

---

<sup>7</sup> Two of the complainants, Thomas and Suzanne M. Tallone, have requested to withdraw as parties and that request is hereby granted and their names have been removed from the caption.

<sup>8</sup> Under Rule 11.1(e), Rules of Practice and Procedure, 15 days are allowed for responding to a motion.

<sup>9</sup> Complaint, at 8.

Company's Answer denies that the subject rates are unfair, draconian, hazardous and discriminatory or that the notification was inadequate.<sup>10</sup> Company's Motion to Dismiss contends that the Complaint fails to state a claim under the Public Utilities Code. The Company argues, in essence, the Complainants' grievances are with what the Commission has done within its authority not with any violation of the Public Utilities Code.<sup>11</sup> Complainants have not responded to that argument.

We are granting the motion on a different ground, namely that the Complaint lacks ripeness. We made it clear in adopting the tiered conservation rate design on a pilot basis in Los Osos, and in three other ratemaking areas of the Company's District I, that the pilot would be reviewed in the company-wide GRC which is to be filed in July 2011.<sup>12</sup> At that time the Company is required to provide information useful for an evaluation of the pilot conservation rate design. That GRC is the Commission-designated forum for hearing and evaluating ratepayer concerns over the design and implementation of the tiered conservation rates in the pilot programs in Los Osos and other ratemaking areas of the Company.

---

<sup>10</sup> Answer, at 7-12.

<sup>11</sup> Motion to Dismiss, at 5-9.

<sup>12</sup> Settlement Agreement, III.B. at 2, adopted in D.09-05-005, at 19, Ordering Paragraph (O.P.) No. 1, and augmented in O.P. No. 2.

The Complainants did not participate in the A.08-09-010 proceeding<sup>13</sup> from the time of its filing on September 15, 2008, through the end of the comment period on the proposed decision on May 2, 2009. Their Complaint on file now is untimely. We expressly chose not to have the pilot program at Los Osos reviewed in the District I GRC, scheduled to start in January 2010, because of the inadequate passage of time for evaluating its implementation.<sup>14</sup> To undertake to evaluate it here, before there has been a sufficient period of implementation to collect data, likewise would be premature.

Although we are dismissing the Complaint here as untimely, we encourage Complainants to take advantage of the opportunity they will have beginning in mid-2011 to protest and/or comment on the Los Osos conservation rate design in the company-wide GRC. The quality of the evaluation of the pilot program will depend on informed input from them, other ratepayers, the Company, the staff of the Commission and the public.

## **5. Conclusion**

The Complaint is untimely because the time scheduled for the evaluation of the pilot tiered conservation rate design is not to begin until mid-2011 at the company-wide GRC. Not being ripe, the Complaint is dismissed. Complainants

---

<sup>13</sup> The Company filed affidavits of newspaper noticing and mailing in Application proceedings A.080-09-010, representing compliance with the methods required for eliciting comments and protests from the public and ratepayers. On November 18, 2008 the Company filed an Affidavit of Mailing-Region I Los Osos Service Area, indicating that notice was mailed to each customer as to, among other things, how to obtain a copy of the application requesting authority to established tiered conservation rates and how to protest and comment. Complainants in particular find newspaper notice in this technological age to be inadequate, and state that many ratepayers have no recall of notice and that sufficient notice of the large water bills was not given in general.

<sup>14</sup> Settlement Agreement, III.B.1, at 3.; see D.09-05-005, at 19, O.P. No. 1 and No. 2.

are encouraged to participate and voice their concerns in the upcoming company-wide GRC.

## **6. Categorization and Need for Hearing**

We confirm here the categorization of this proceeding as a ratesetting matter and, due to the dismissal of the complaint on the pleadings, remove the designation of it as a matter in need of a hearing.

## **Comments of Proposed Decision**

The Proposed Decision of the assigned Administrative Law Judge (ALJ) 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 or reply comments were received.

## **Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Gary Weatherford is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. As a result of I.07-01-022 (Water Conservation Proceedings for Class A Water Companies), and in furtherance of the 2005 Water Action Plan, the Commission ordered, among others, to undertake the implementation of increasing block tiered water rates on a pilot basis in select ratemaking areas.

2. The Los Osos ratemaking area is one of the areas with such a pilot program, as ordered in D.09-05-005. The Company filed affidavits of newspaper noticing and mailing in Application proceeding A.080-09-010. On November 18, 2008 the Company filed an Affidavit of Mailing-Region I Los Osos Service Area, indicating that notice was mailed to each customer as to, among other things, how to obtain a copy of the application (requesting authority to established tiered conservation rates) and how to protest and comment. The

Los Osos tiered conservation rates were implemented effective September 1, 2009, and are scheduled to be evaluated in the company-wide General Rate Case of the Golden State Water Company that is to be filed in July 2011.

3. Complainants in C.10-09-009 are customers in the Los Osos ratemaking area who have grievances concerning the notification, design and implementation of the pilot tiered conservation rates.

### **Conclusions of Law**

1. The Commission-ordered pilot programs involving tiered conservation rates and the evaluation of those programs, during GRCs, should remain on schedule.

2. The Complaint in C.10-09-009 calls for a premature evaluation of the pilot tiered conservation rates in the Los Osos ratemaking area and should be dismissed, but the Complainants should be encouraged to participate in the company-wide General Rate Case to be filed in July 2011 that will include an evaluation of those pilot tiered conservation rates.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Complaint in Case 10-09-009 is dismissed.
2. The Golden State Water Company shall give separate and advanced written mailed notice, in addition to any bill insert, to each of the Complainants herein concerning all opportunities to review, protest and comment on that portion of the next company-wide General Rate Case bearing on the tiered conservation rate design in the Los Osos ratemaking area.



3. Case 10-09-009 is closed.

This order is effective today.

Dated January 13, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

