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

**DIVISION OF WATER AND AUDITS**  
Water and Sewer Advisory Branch

**RESOLUTION NO. W-4921**  
June 21, 2012

**R E S O L U T I O N**

**(RES. W-4921), ORDER AFFIRMING THE DIVISION OF WATER AND AUDITS' DISPOSITION DENYING THE TOWN OF APPLE VALLEY'S PROTESTS TO GOLDEN STATE WATER COMPANY'S ADVICE LETTER NO. 1454-WA AND APPLE VALLEY RANCHOS WATER COMPANY ADVICE LETTER NO. 168-WA MEMORIALIZING IN THEIR TARIFFS THE 2010 TAX ACT MEMORANDUM ACCOUNT ESTABLISHED BY RESOLUTION L-411A.**

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**SUMMARY**

This resolution affirms the Division of Water and Audits' (Division) September 2, 2011 denial of the Town of Apple Valley's protests to Golden State Water Company and Apple Valley Ranchos Water Company Advice Letters Nos. 1454-WA and 168-WA, respectively, which placed into their tariffs the 2010 Tax Act Memorandum Account.

**BACKGROUND**

The Commission issued Res. L-411A on June 23, 2011. Res. L-411A established a one-way memorandum account for cost-of-service rate regulated utilities to track the impacts of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Tax Relief Act or New Tax Law) not addressed in a 2011 or 2012 test year General Rate Case proceeding. Specifically, the memorandum account established by Res. L-411A will track on a Commission-jurisdictional, revenue requirement basis: (1) decreases in each impacted utility's revenue requirement resulting from increases in its deferred tax reserve; and (2) other direct changes in revenue requirement resulting from taking advantage of the Tax Relief Act. Utilities were also authorized to include in the memorandum account offsets to reflect additional costs or expenses, not otherwise recovered in rates, incurred as a result of certain additional utility infrastructure investment enabled by the bonus depreciation provisions of the New Tax Law. Finally, each utility was ordered to file an advice letter to add a 2010 Tax Act Memorandum Account to its tariffs consistent with the requirements specified in Ordering Paragraphs 1, 3, 4, 5, and 6 of Res. L-411A.

Golden State Water Company and Apple Valley Ranchos Water Company filed ALs 1454-W, as supplemented, and 168-W, as supplemented, respectively, in compliance with Res. L-411A. The Town of Apple Valley (Town) filed protests to both advice letters on August 26, 2011. The Town raised concerns about the lack of notice to utility customers of ALs 1454-W and 168-W. The Town also expressed concerns with future rate impacts from offsets recorded in the 2010 Tax Act Memorandum Accounts.

The Division approved both advice letters, as supplemented, determining them to be in compliance with Res. L-411A. On September 2, 2011, the Division sent a disposition letter to the Town denying its protests of ALs 1454-W and 168-W. The Division's disposition letter notes that pursuant to General Order 96-B, (GO 96-B), Water Industry Rule 3.1, establishment of a memorandum account does not require notice to customers. ALs 1454-W and 168-W were each properly served on the respective utility service list for advice letter filings.

With regard to the Town's concerns about rate impacts, the Division's disposition letter notes that it is premature at this point as the protested advice letters do not request Commission authorization for addressing the dollars recorded in the 2010 Tax Act Memorandum Account. Further, as noted in Res. L-411A, the 2010 Tax Act Memorandum Account is a one-way memorandum account. As explained in Res. L-411A, the 2010 Tax Act Memorandum Account "shall not be used to recover any net revenue requirement increase." (Res. L-411A, Ordering Paragraph #4)

On September 12, 2011, The Town filed a timely appeal of the Division of Water and Audits' denial of its protests pursuant to General Order 96-B (GO 96-A), General Rule 7.7.1. The Town maintains "that notice should be given to customers when accounts are established to track large sums of revenues and that will very likely have rate impacts in the future in a way that is unfair to the ratepayers." (Appeal at p. 2) The Town does not believe that it is premature to protest the establishment of the 2010 Tax Act Memorandum Account on the basis of future rate impacts given its view on how ratepayers will be disadvantaged. Neither does the Town find any comfort in the one-way nature of the 2010 Tax Act Memorandum Account.

## **DISCUSSION**

We affirm the Division's denial of the Town's protests to Golden State Water Company's AL 1454-WA and Apple Valley Ranchos Water Company's AL. 168-WA. Neither GO 96-B, General Rule 4.2, Water Industry Rule 3.1, nor any other authority requires utilities to send customer notices for advice letters establishing memorandum accounts. Utilities must give customer notice when "requesting higher rates or charges, or more restrictive terms or conditions, than those currently in effect." (GO 96-B, General Rule 4.2). In this instance, the protested advice letters do not seek approval of a

more restrictive term or condition, or of a rate or charge increase. Indeed, these advice letters do not establish any memorandum accounts. The Commission in Res. L-411-A already established these accounts and directed the utilities to file advice letters to add these accounts to their tariffs. All these advice letters do is to add to the utilities' tariffs the appropriate language to reflect the Commission's direction as to what is to be tracked in these accounts. Thus, these advice letters are "compliance advice letters" (as defined in Water Industry Rule 1.3). Accordingly, pursuant to Water Industry Rule 3.2, customer notice is not required here, because these advice letters were not submitted in compliance with an informal general rate case. In short, there is no notice deficiency associated with Golden State Water Company's AL 1454-WA and Apple Valley Ranchos Water Company's AL 168-WA. As such, the Division was correct in denying the Town's protest that the advice letters should have been noticed to customers. If the Town wants General Rule 4.2 and/or Water Industry Rule 3.1 in GO 96-B modified to require customer notice when utilities request implementation of a memorandum account, it should file a petition for modification of Decision 07-01-024, where the Commission adopted these rules, or a petition for rulemaking. A protest of a utility advice letter is not the appropriate procedure for changing General Order 96-B, General Rule 4.2 or Water Industry Rule 3, which affect the entire water industry.

While the Town recognizes that these are one-way memorandum accounts, it seems concerned that the utilities will make capital expenditures that they otherwise would not have made and that the cost of these capital expenditures will result in: 1) leaving no net savings in the memorandum accounts to be returned to ratepayers; and 2) increased costs in the future as these capital improvements are included rate base. Res. L-411-A addresses these concerns, and also provides the Town future opportunities for it to object to any specific capital expenditures made by the utilities.

In the first place, utilities may only record costs or expenses of "*needed*" infrastructure as offsets in the memorandum account. (Res. L-411-A, Finding and Conclusion No.9, and Ordering Paragraph No. 5.) Second, unless they obtain separate permission from the Commission, utilities may only record as offsets in the memorandum account projects of the types that are typically included in general rate case applications. (Res. L-411-A, p. 15, and Ordering Paragraph No. 5.) Third, Res. L-411-A does not authorize the utilities to commence construction of projects or to recover the cost of such projects from ratepayers; those issues are determined not by Res. L-411-A, but by reference to the Public Utilities Code and other orders of this Commission. (Res. L-411-A, p. 15.) More specifically, the reasonableness of the costs of any projects included as offsets in the memorandum account remain subject to reasonableness review before those costs can be included in rate base. (See Res. L-411-A, p. 6.)

These provisions of Res. L-411-A limit the projects that can be recorded as offsets in the memorandum account to those that are needed, and also preserve the Commission's

existing procedures for review of capital expenditures. Thus, when the utilities seek to close out their memorandum accounts, the Town will have an opportunity to object to any infrastructure expenditures that it believes were not “needed”. (Res. L-411-A, Ordering Paragraph No. 6, addresses when the Commission will address the disposition of the amounts recorded in the memorandum accounts.) The Town will also have an opportunity to address whether, and the extent to which, the costs of these projects should be included in rate base when the utilities file their General Rate Cases (GRCs). Indeed, all customers will be provided notice of the filing of those GRCs.<sup>1</sup>

To the extent the Town believes that these provisions of Res. L-411-A do not adequately protect its residents, or that these offsets should not have been allowed, its protests are too late. As stated in GO 96-B, General Rule 7.4.2 “a protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by statute or Commission order applicable to the utility.” The provisions in the utilities’ advice letters for recording capital costs and expenses as offsets in their memorandum accounts comply with what the Commission ordered in Res. L-411-A. Indeed, the Commission expressly determined in Resolution L-411-A that it was desirable to allow the utilities to record as offsets in their memorandum accounts the costs and expenses of needed infrastructure not otherwise reflected in rates, so as not to discourage utilities from using the tax savings resulting from the New Tax Law for investment in additional, needed infrastructure. (Findings and Conclusions Nos. 9 and 18.) The proper place for the Town to have objected to that policy would have been during the Commission’s consideration of Res. L-411 and L-411-A. As explained in General Rule 7.4.2, a protest to an advice letter that complies with the Commission’s prior orders is not the proper place to make such policy objections.

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<sup>1</sup> The Town could intervene in Golden State Water Company’s general rate cases where Golden State Water Company seeks approval of future capital investments. Indeed, all ratebase additions, whether new projects to be constructed or projects already constructed, are reviewed before being added to ratebase. This can occur in a General Rate Case, separate application, or a Tier 3 rate base offset advice letter. The Town could also intervene as a party in Golden State Water Company’s and Apple Valley Rancho Water Company’s subsequent general rate case (or other proceeding as ordered in the general rate case) in which the utilities’ 2010 Tax Act Memorandum Accounts are reviewed.

## **COMMENTS**

Public Utilities Code Section 311(g) (1) generally requires that resolutions 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, the draft resolution was mailed to the Town, Golden State Water Company, and Apple Valley Ranchos Water Company for comments. No comments were received.

## **FINDINGS AND CONCLUSIONS**

1. The Commission issued Res. L-411A on June 23, 2011 requiring utilities to establish a 2010 Tax Act Memorandum Account to reflect the tax benefits of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (Tax Relief Act or New Tax Law) and other direct changes in revenue requirement resulting from each utility's taking advantage of the Tax Relief Act.
2. The memorandum account established by Res. L-411A tracks on a Commission-jurisdictional, revenue requirement basis: (1) decreases in each covered utility's revenue requirement resulting from increases in its deferred tax reserve; and (2) other direct changes in revenue requirement resulting from taking advantage of the Tax Relief Act. Utilities are also authorized to include in the memorandum account offsets to reflect additional costs or expenses, not otherwise recovered in rates, incurred as a result of certain additional utility infrastructure investment enabled by the bonus depreciation provisions of the New Tax Law. Finally, each utility is ordered to file an advice letter to add a 2010 Tax Act Memorandum Account to its tariffs consistent with the requirements specified in the Ordering Paragraphs of Res. L-411A.
3. Golden State Water Company filed Advice Letter No. 1454-W to incorporate into its tariffs the 2010 Tax Act Memorandum Account by Res. L-411A. Advice Letter No. 1454-W was supplemented by Advice Letter 1454-WA on August 15, 2011.
4. Apple Valley Ranchos Water Company filed Advice Letter No. 168-W to incorporate into its tariffs the 2010 Tax Act Memorandum Account by Res. L-411A. Advice Letter No. 168-W was supplemented by Advice Letter 168-WA on August 16, 2011.
5. The Town of Apple Valley protested Golden State Water Company's Advice Letter No. 1454-W and Apple Valley Ranchos Water Company's Advice Letter No. 168-W.

6. In its protests, the Town of Apple Valley contends that the protested advice letters should have been noticed to the utilities' customers. The Town also expressed concerns with future rate impacts from projects whose costs are recorded as offsets in the 2010 Tax Act Memorandum Accounts.
7. The Division of Water and Audits approved Advice Letters Nos. 1454-WA and 168-WA as being in compliance with Res. L-411A.
8. The Division of Water and Audits' issued a disposition letter on September 2, 2011 denying the Town of Apple Valley's protests.
9. On September 12, 2011, the Town of Apple Valley filed an appeal of the Division of Water and Audits' denial of its protests.
10. Neither General Rule 4.2, nor Water Industry Rule 3.1 of General Order 96-B, nor any other authority requires a water utility to notify its customers of utility advice letters placing into utility tariffs a memorandum account previously established by the Commission. General Order 96-B, General Rule 4.2 states utilities must give customer notice when "requesting higher rates or charges, or more restrictive terms or conditions, than those currently in effect."
11. The protested advice letters do not seek approval of a more restrictive term or condition, or of a rate or charge increase.
12. Golden State Water Company's AL 1454-WA and Apple Valley Ranchos Water Company's AL 168-WA add to the utilities' tariffs the appropriate language to reflect the Commission's direction as to what is to be tracked in the Tax Act Memorandum Account. These advice letters are "compliance advice letters" (as defined in Water Industry Rule 1.3). Pursuant to Water Industry Rule 3.2, customer notice is not required here, because these compliance advice letters were not submitted in compliance with an informal general rate case.
13. There is no notice deficiency associated with Golden State Water Company's Advice Letter No. 1454-WA and Apple Valley Ranchos Water Company's Advice Letter No. 168-WA.
14. The Division of Water and Audits' denial of the Town of Apple Valley's protest on the notice issue should be affirmed.
15. The Town of Apple Valley could file a petition for modification of D.07-01-024 that adopted General Order 96-B, Rule 3.1, if it wishes the scope of the customer notice requirement broadened. Alternatively, the Town of Apple Valley could petition

for a new rulemaking to examine the scope of filings that require a customer notice. A protest of a utility advice letter is not the appropriate procedure for changing General Order 96-B, Rule 3.1, which affects the entire water industry.

16. The Town of Apple Valley is concerned that the utilities will make capital expenditures that they otherwise would not have made and that the cost of these capital expenditures will result in: 1) leaving no net savings in the memorandum accounts to be returned to ratepayers; and 2) increased costs in the future as these capital improvements are included rate base.
17. Resolution L-411-A provides that utilities may record costs or expenses of “needed” infrastructure as offsets in the memorandum account.
18. Resolution L-411-A provides that unless they obtain separate permission from the Commission, utilities may only record as offsets in the memorandum account projects of the types that are typically included in general rate case applications.
19. Resolution L-411-A does not authorize the utilities to commence construction of projects or to recover the cost of such projects from ratepayers; those issues are determined not by Resolution L-411-A, but by reference to the Public Utilities Code and other orders of this Commission.
20. The provisions in the utilities’ advice letters for recording capital costs and expenses as offsets in their memorandum accounts comply with what the Commission ordered in Resolution L-411-A.
21. The Town of Apple Valley’s objection to the offset provisions of the memorandum accounts is barred by General Rule 7.4.1 of GO 96-B., which provides that a protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by the Commission.
22. Before the utilities seek to close out their memorandum accounts, the Town of Apple Valley will have an opportunity to object to any infrastructure expenditures that it believes were not “needed.” The Town of Apple Valley will also have an opportunity to address whether, and the extent to which, the costs of these projects should be included in rate base when the utilities file either a general rate case, separate application, or a Tier 3 rate base offset advice letter to include these projects in rate base.
23. The Division of Water and Audits’ denial of the Town of Apple Valley’s protests should be affirmed.

24. This resolution was circulated for public comment pursuant to Public Utilities Code Section 311(g) (1). No comments were received.

**THEREFORE IT IS ORDERED THAT:**

1. The Division of Water and Audits' denial of the Town of Apple Valley's protests of Golden State Water Company's Advice Letter No. 1454-WA and Apple Valley Ranchos Water Company's Advice Letter No. 168-WA is affirmed. The Division of Water and Audits' approvals of Golden State Water Company's Advice Letter No. 1453-WA and Apple Valley Ranchos Water Company's Advice Letter No. 168-WA are affirmed.
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 June 21, 2012; the following Commissioners voting favorably thereon:

\_\_\_\_\_/s/ PAUL CLANON

Paul Clanon  
Executive Director

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners