



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

04-01-08

04:59 PM

In the Matter of the Application of Golden State Water Company (U 133 W) for an Order pursuant to Public Utilities Code Section 851 Approving a Settlement in a Water Rights Adjudication, and for an Order Pursuant to Section 454 Approving the Proposed Ratemaking Treatment of the Costs of the Adjudication and Settlement.

Application 06-02-026
(Filed February 24, 2006)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION DISMISSING
GSWC'S APPLICATION 06-02-026**

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") hereby submits these Reply Comments in response to Golden State Water Company's ("GSWC") Comments on the Proposed Decision of Administrative Law Judge ("ALJ") DeAngelis dismissing Application ("A") 06-02-026.

The Proposed Decision dismisses A. 06-02-026 without prejudice and denies GSWC's Motion to Extend the Statutory Deadline for resolving A. 06-06-026 and to Set a Schedule for Phase II ("Motion to Extend"). The Proposed Decision reaches conclusions that are supported by the facts, law, and record.

In regard to Comments, Rule 14.3(c) states:

(c) "Comments shall focus on factual, legal, or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record. Comments which merely reargue positions taken in briefs will be accorded no weight. . . ."

GSWC violated this rule by inappropriately introducing in its Comments -- for the first time in the record of this proceeding -- new facts regarding its new plan for

providing supplemental water to the Nipomo Mesa. GSWC's attempt to introduce this proposal *de novo* far exceeds the parameters of Rule 14.3(c) and should not be given any weight.

GSWC had at least 5 separate previous opportunities in which to introduce these new facts. These include:

1. GSWC's First Status Report, dated June 22, 2007;
2. GSWC's Second Status Report, dated September 24, 2007;¹
3. GSWC's December 4, 2007 response to the ALJ's November 27, 2007 e-mail request for an update to the status of the proceeding;
4. GSWC's Motion to Extend Time for Application 06-02-026 and to Set Schedule for Phase II, filed on January 31, 2008 (GSWC Motion); and finally,
5. GSWC's Reply to the Responses of the Division of Ratepayer Advocates, Don Ward for the Orcutt Area Advisory Group, and Gerald Trimble to GSWC's Motion To Extend, filed February 20, 2008.

Instead, GSWC choose to introduce this new proposal at the 11th hour in its Comments to the proposed Decision. Moreover, GSWC's Comments do not address any factual, legal or technical errors in the Proposed Decision, but rather introduce *new facts* that have no place in comments on a Proposed Decision.

GSWC allegedly submits its "comments to clarify the status of the Application and GSWC's proposal to continue with the Application, ultimately saving all the parties involved significant time and resources."² GSWC states that "[a] dismissal of GSWC's Application, on the other hand, will needlessly delay and add cost to these proceedings for no purpose, because GSWC will simply re-file its application with the changes needed to reflect the content of its proposed supplemental testimony. . . ."³

¹ GSWC provided quarterly status reports on the status of the court proceedings and supplemental water issues pursuant to the Settlement adopted in D. 07-05-041.

² GSWC's Comments, p. 1.

³ GSWC's Comments, p. 2.

DRA asserts this is precisely what GSWC should have done and needs to do because A. 06-02-026 does not accurately reflect the changed circumstances regarding the delivery of supplemental water to the Nipomo Mesa. Therefore, DRA supports the ALJ's Proposed Decision to dismiss the application without prejudice and allow GSWC to file a new application with accurate information.

In its Comments, GSWC acknowledges that there are still continuing uncertainties in regard to the Nipomo Supplemental Water program. GSWC states that “implementation of “the Nipomo Supplemental Water” program – does require some further definition. The Nipomo Supplemental Water program is the means by which GSWC (and certain other stipulating parties) will provide supplemental water to the Nipomo Mesa Management Area. In an effort to minimize the overall costs for the Nipomo Supplemental Water program, the physical delivery method for the project has not yet been settled (and, as such, there remains some uncertainty).”⁴ In fact, GSWC also states that it “is still finalizing the details of the Nipomo Supplemental Water program, it is not prepared to convey all of the details at this time; however, GSWC intends to do so in testimony in accordance with a schedule as detailed in its Motion To Extend (i.e., by April 2008).”⁵ (Emphasis added)

Thus, it is undisputed that uncertainty about the details of its proposed supplemental water plan still exists. In addition, as DRA pointed out in its Motion To Dismiss filed February 28, 2008, GSWC's proposed expedited schedule would violate the parties' rights to procedural due process.⁶

Section 1701.5 (a) of the California Public Utilities Code⁷ requires the Commission to resolve issues identified in a proceeding categorized as ratesetting within 18 months of the date the Commission issued its scoping memo in the proceeding. The 18-month period for A.06-02-026 was extended by six months in D.07-05-041. That

⁴ GSWC's Comments, p. 3.

⁵ GSWC's Comments, p. 4.

⁶ DRA's Motion to Dismiss, February 28, 2008, p. 8.

⁷ All “Section” references are to the Public Utilities Code, unless otherwise specified.

period expired on February 25, 2008. In certain circumstances, Section 1701.5 authorizes the Commission to deviate from the statutory 18 month time frame. The Commission may either extend this time frame in its scoping memo or extend this time frame by written order.⁸ GSWC's Comments inappropriately attempt to further extend the statutory time limit by inappropriately introducing new facts in its Comments regarding the supplemental water issue in the Nipomo Mesa.

GSWC's Comments fail to state why this proceeding should not be closed for having exceeded the statutory deadline required by Section 1701.5(a) and (b). Moreover, GSWC's proposal to keep this proceeding open would not only violate Section 1701.5, it would wrongly place pressure on the Commission to approve a settlement under an artificial statutory time constraint, forcing the Commission to act on approving the Stipulation in the absence of specific information about what solution(s) GSWC and other parties will ultimately adopt under the Stipulation. In order to determine the fairness of the supplemental water arrangement(s) to GSWC's ratepayers and shareholders, the Commission must know what arrangement(s) the water purveyors in the Nipomo Mesa ultimately agreed upon and its related cost effects. A theoretical understanding that may never materialize is an insufficient basis upon which to make such a decision. For these reasons, approval of GSWC's request to continue this proceeding would violate the Commission's rules that are designed to protect parties' due process rights.

The Proposed Decision correctly concludes, "While we would prefer to resolve this matter in this pending proceeding, the provisions of § 1701.5 do not favor keeping proceedings open in these circumstances. At the appropriate time in the future, Golden State may ask the Commission to consider the issues that remain unresolved here by filing an application.)"² Rather than violate Section 1701.5, the Proposed Decision appropriately dismisses the application without prejudice so that GSWC may file a new

⁸ See, § 1701.5(a) and (b).

² Proposed Decision, p. 4; Conclusions of Law 4 - 5.

application thereby starting over in regard to the statutory time frame when these issues are resolved.

For these reasons stated, and those specified in DRA's Motion to Dismiss, DRA recommends that the Commission adopt the Proposed Decision.

Respectfully submitted,

/s/ MARIA L. BONDONNO

MARIA L. BONDONNO
Staff Counsel

Attorney for the Division of Ratepayer
Advocates California Public Utilities
Commission
505 Van Ness Avenue
San Francisco, CA 94102
Tel.: (415) 355-5594
Fax: (415) 703-4432
[E-Mail: bon@cpuc.ca.gov](mailto:bon@cpuc.ca.gov)

April 1, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION DISMISSING GSWC’S APPLICATION 06-02-026”** in **A.06-02-026** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on April 1, 2008 at San Francisco, California.

/s/ Imelda Eusebio
Imelda Eusebio

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* * * * *

SERVICE LIST FOR A.06-02-026

kswitzer@gswater.com
luhintz2@verizon.net
jerryt@linkline.com
Stewartjohnston@mac.com
bon@cpuc.ca.gov
jkarp@winston.com
jgaron@gswater.com
koconnor@winston.com
dsb@cpuc.ca.gov
flc@cpuc.ca.gov
jjs@cpuc.ca.gov
rmd@cpuc.ca.gov