PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 06-02-026

This is the proposed decision of Administrative Law Judge (ALJ) Thorson. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Thorson at jet@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

Decision **PROPOSED DECISION OF ALJ THORSON (Mailed 4/16/2007)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Golden State Water Company (D 133 W) for an Order Pursuant to Public Utilities Code Section 851 Approving a Stipulation in a Water Rights Adjudication, and for an Order Pursuant to Section 454 approving the Ratemaking Treatment of the costs of the Adjudication and Settlement.	Application 06-02-026 (Filed February 24, 2006)

INTERIM OPINION APPROVING PARTIAL SETTLEMENT, AUTHORIZING ADDITIONAL PHASE, AND EXTENDING TIME

We approve a Settlement Agreement resolving certain contested issues in this proceeding, specifically, the ratemaking treatment of past and future litigation expenses incurred by Golden State Water Company (Golden State) in participating in the superior court adjudication of the Santa Maria groundwater basin. The settlement is among Golden State, the Division of Ratepayer Advocates (DRA) (protestor), and Orcutt Area Advisory Group, Inc. (Orcutt) (protestor) (settling parties). A group of landowners (Landowner Group Parties or "Landowners") who also protested Golden State's application object to the settlement but have shown no reason why the settlement should not be approved. We also authorize a second phase to this proceeding and extend the statutory deadline for completing this proceeding.

Background

On February 24, 2006, Golden State filed an application concerning a stipulation entered into by Golden State and other parties to resolve many of the issues pending in the superior court adjudication of the Santa Maria groundwater basin. Under the superior court settlement, Golden State agrees to a determination of its water rights and commits to share a portion of the construction costs for a new water supply pipeline for the area and ongoing groundwater basin management expenses. Golden State asked the Commission to determine that the stipulation is just and reasonable, in the public interest, and should be approved. In addition to requesting the Commission's approval of its participation in the settlement, Golden State also requested rate setting for past and anticipated litigation expenses resulting from the adjudication.[1]

DRA protested the application and its concerns have focused on rate setting treatment for litigation expenses and Golden State's obligations to purchase and deliver water under the superior court settlement. Orcutt also protested the application with concerns about the rate treatment of litigation expenses, pipeline construction costs, water purchase costs, and ongoing operation and maintenance expenses. The Landowner Group Parties disagreed with the need for Commission review of the superior court settlement and substantive provisions of the settlement.

[1] The groundwater adjudication settlement does not resolve all issues pending before the Superior Court. Golden State indicates it must participate in subsequent phases of the adjudication involving claims asserted by water users who did not join the settlement.

The Assigned Administrative Law Judge (ALJ) referred this proceeding to mediation and, after several sessions, a number of the parties appeared to be close to a comprehensive agreement of all issues. Before this agreement could be finalized and submitted to the Commission, the Nipomo Community Services District (one of the major parties to the superior court settlement) announced that it was considering alternatives to the new water supply pipeline, a major component of the superior court settlement. This uncertainty about whether the pipeline would be built has made it impossible for the parties before the Commission to conclude a comprehensive settlement. However, Golden State, DRA, and Orcutt have concluded a partial Settlement Agreement concerning rate treatment for Golden State's past and anticipated attorneys fees.

Proposed Partial Settlement

In lieu of Golden State's request that it rate base all $5.5 million of litigation costs and DRA's position that Golden State should amortize without interest all $5.5 million over 20 years, the partial Settlement Agreement provides the following compromise:

- Golden State should rate base $2.7 million of the $5.5 million of previously incurred litigation. As explained in the application, these costs have already been included in rate base in prior rate setting proceedings as Construction Work in Progress.
- Golden State should amortize, with interest, the remaining $2.8 million of $5.5 million of litigation costs in rates over a ten-year period. The agreed upon interest rate is the ten-year treasury note rate plus 1.5%, adjusted monthly to reflect changes to the ten-year treasury note rate. This provision fairly matches the interest rate with the period of the amortization.
- The litigation costs that have been incurred, and will continue to be incurred, by Golden State after December 31, 2005, will also be amortized over ten years in the same manner as for the $2.8 million discussed above, subject to Commission review of

> such costs as to their reasonableness. Finally, the Settlement Agreement provides that memorandum accounts should be established to implement the amortization and recovery of litigation costs described above.

Criteria for Approving Settlement

Pursuant to Rule 12.l(d) of the Commission's Rules of Practice and Procedure (Rules), the Commission approves settlements that it finds "reasonable in light of the whole record, consistent with law, and in the public interest."

The Landowners are the only litigants opposing the settlement. They state only that the partial settlement should not be approved because the superior court settlement "is a 'package deal' that can be properly evaluated only by looking at all aspects of the arrangement. Approval should not be piecemeal." (Response to Joint Motion for Adopting Settlement at 3-4 (Feb. 26, 2007).) The partial settlement only pertains to Golden State's attorneys fees, a matter not contained in the superior court settlement, and the Landowners do not explain how approval of ratesetting treatment for attorneys fees could be considered "piecemeal" consideration of the superior court settlement. The Landowners also make the bold statement that they are "prepared to demonstrate that [Golden State] prosecuted the underlying litigation in a way that was inconsistent, incompetent, and contrary to the interests of the ratepayers." (*Id.* at 4.) The Landowners, however, do not satisfy the requirements of Rule 12.2 to make a more complete showing of the factual and legal basis for their objections to the proposed partial settlement. Without specifying the portions of the settlement they oppose, the legal basis for their opposition, the factual issues they contest, and appropriate supporting citations, we conclude that the

Landowners have waived "all objections to the settlement, including the right to hearing." (Rule 12.2.)

The Landowners having waived any objection, the proposed settlement is properly evaluated under Rule 12.1's criteria and the guidance of *San Diego Gas & Electric,* 46 CPUC 2d 538 (1992) (applicable to all-party settlements). The Settlement Agreement satisfies both Rule 12.1 and the guidance of San Diego Gas & Electric and therefore, should be approved by the Commission. The following reasons support the Commission's approval of the Settlement Agreement:

- The Settlement Agreement is reasonable in light of the whole record. The Settlement Agreement represents a fair compromise of the contested issues to be resolved thereby, and reasonably allocates the risks and benefits associated with the Application. For example, the Settlement Agreement provides that a portion of Golden State's litigation costs are to be in rate base, and the remaining portion of the costs are to be amortized with interest over a ten-year period.
- The settling parties are fairly representative of all affected interests: Golden State (the water company incurring the legal expenses), DRA (representing ratepayer interests), and Orcutt (also representing ratepayer and local interests).
- The settlement is sufficiently documented in an executed Settlement Agreement (dated February 16, 2007) set forth as Appendix A to this decision. The Settlement Agreement is sufficient for the Commission to discharge its future regulatory obligations with respect to the parties and their interests.
- The Settlement Agreement was reached with the assistance and support of ALJ Peter Allen through mediation. The presence of a neutral third party contributed to the crafting of equitable solutions that were reasonable to the settling parties.
- The Settlement Agreement is consistent with law and does not contravene statutory provisions or prior Commission decisions. The settling parties actively followed the Commission's

procedural rules and the mediator's guidance during the course of the settlement negotiations.

- The Settlement Agreement is in the public interest. The Settlement Agreement preserves the Commission's resources by significantly offsetting the time and effort needed to conduct hearings on the issues resolved by the Settlement Agreement.

The Settlement Agreement satisfies criteria under Rule 12.1(d) and *San Diego Gas & Electric* for the approval by the Commission.

Additional Phase for Proceeding

In their joint motion, the settling parties also request that the remaining issues in this proceeding, not otherwise addressed in the partial Settlement Agreement, be deferred to a second phase pending further developments concerning the pipeline component of the superior court settlement. They also ask that the normal 18-month deadline (calculated from the date of the Scoping Memo) for completing this ratesetting case (now December 27, 2007) be extended as allowed under Public Utilities Code section 1701.5.

The remaining issues in this proceeding should be deferred to a second phase since this deferral will allow more time for the uncertainties in the superior court settlement to be removed, while avoiding the time and expense of a new proceeding to address these same issues. A 60-day extension under section 1701.5 will facilitate this process.

Comments on Proposed Decision

On April 16, 2007, the Assigned Administrative Law Judge's proposed decision addressing the proposed settlement was filed with the Commission and served on the parties in accordance with section 311(d) of the Public Utilities

Code and Rule 14.3 of the Rules of Practice and Procedure. The initial comments were received from _____ and _____ on _____ , 2007.

Assignment of Proceeding

John Bohn is the Assigned Commissioner. John E. Thorson is the Assigned ALJ and principal hearing officer in this proceeding. ALJ Peter Allen mediated the proceeding.

Findings of Fact

1. Golden State has requested Commission approval of its participation in a superior court settlement in the adjudication of the Santa Maria groundwater basin.

2. Although DRA and Orcutt objected to Golden State's application, all three parties mediated a partial Settlement Agreement of the contested issues. This partial Settlement Agreement is set forth in Appendix A. A comprehensive agreement was not possible because of subsequent uncertainties as to the terms and conditions of the superior court settlement.

3. The settling parties have agreed on rate setting treatment for Golden State's attorneys fees incurred, or to be incurred in, the groundwater adjudication. Pursuant to the agreement, Golden State will be permitted to place into rate base $2.7 million of the $5.5 million of previously incurred litigation expenses.

4. Golden State will amortize, with interest, the remaining $2.8 million of litigation costs over a ten-year period. Litigation costs that have been incurred, or will continue to be incurred, by Golden State after December 31, 2005, will also be amortized over ten years, subject to the Commission's review for reasonableness.

5. The interest rate on amortized amounts will be the ten-year treasury note rate (adjusted monthly to reflect changes in treasury note interest), plus 1.5%. The partial Settlement Agreement is set forth in Appendix A to the Joint Motion.

6. The specific financial terms of the Settlement Agreement are set forth in Appendix A.

7. In satisfaction of Rule 12.1(b), notice of a mandatory settlement conference (pursuant to the Scoping Memo) was sent by Golden State to all parties on July 14, 2006. Notice of a mediating session was provided by the assigned ALJ to all parties on November 3, 2006.

8. The Landowners did not specify the portions of the partial Settlement Agreement that they oppose, the legal basis for their opposition, or the factual issues they contest.

9. The settling parties have requested that the Commission establish a second phase to this proceeding to allow further consideration of the superior court settlement once uncertainties in that settlement are resolved. The settling parties also ask for a 60-day extension of the statutory deadline for this proceeding.

Conclusions of Law

1. The settling parties have satisfied Rule 12.1's criteria and the guidance of *San Diego Gas & Electric,* 46 CPUC 2d 538 (1992) for approval of their proposed partial Settlement Agreement.

2. The Landowners have failed to state a sufficient opposition under Rule 12.2 to the proposed Settlement Agreement, and their failure constitutes their waiver of all objections to the proposed Settlement Agreement including the right to a hearing.

3. The proceeding should continue in a second phase, and the statutory deadline imposed by section 1701.5 should be extended by 60 days as allowed by that section.

INTERIM ORDER

IT IS ORDERED that:

1. The joint Motion of Golden State Water Company (Golden State), Division of Ratepayer Advocates, and Orcutt Area Advisory Group, Inc. for Adoption of Settlement Agreement is granted. The Settlement Agreement (set forth in Appendix A) is approved and incorporated herein.

2. With specific amounts set forth in the Settlement Agreement, Golden State is authorized:

   a. To place in rate base $2.7 million of the $5.5 million of previously incurred litigation in the Santa Maria groundwater basin adjudication;

   b. To amortize, with interest, the remaining $2.8 million of $5.5 million of litigation costs in rates over a ten-year period (the agreed upon interest rate is the ten-year treasury note rate plus 1.5%, adjusted monthly to reflect changes to the ten-year treasury note rate);

   c. To amortize, with interest, litigation costs that have been incurred, and will continue to be incurred, after December 31, 2005, in rates over a ten-year period, subject to Commission review of such costs as to their reasonableness (interest to be calculated as set forth in 2(b), supra);

   d. To establish memoranda accounts to implement the amortization and recovery of the litigation costs discussed above.

3. Pursuant to Public Utilities Code section 1701.5, this proceeding is extended by 60 days to and including February 25, 2008.

4. With this decision, Phase 2 of the proceeding now commences and a separate scoping memo may be issued.

5. Application 06-02-026 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 16, 2007, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

********** SERVICE LIST **********
Last Update on 16-APR-2007 by: LIL
A0602026 LIST

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