

Decision 89 04 041 APR 12 1989

ORIGINAL¹⁰

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
of San Jose Water Company U-168-W,)
a corporation, for an order)
authorizing it to (1) increase)
rates charged for water service,)
and (2) revise and add to its Rules)
on file with the Public Utilities)
Commission.)

Mailed

APR 14 1989

Application 88-09-029
(Filed September 14, 1988)

OPINION ON PETITION FOR EMERGENCY RATE RELIEF

Background

On February 21, 1989, the Board of Directors of the Santa Clara Valley Water District (District) declared Santa Clara County (County) to be in a state of drought and ordered an immediate 45% cutback in water usage in the county. District's resolution was announced to the news media, a follow-up letter with water reduction guidelines was sent to all City Councils in the county for appropriate action, and public hearings were scheduled.

District indicates that the cause of this serious water shortage is the lack of rain and subsequent less than normal water allocations by State and Federal water suppliers. At the time of its resolution, District indicated that it would continue to negotiate with State and Federal authorities for additional water.

On March 3, 1989, San Jose Water Company (petitioner) filed a petition for emergency rate relief due to imminent water rationing. Petitioner calculated the effect of 45% mandatory rationing to be a 36.9% loss in revenues for 1989, with a 33.5% increase in rates needed to prevent earnings erosion. On March 17, 1989, with the agreement of the Water Utilities Branch of the Commission Advisory and Compliance Division (CACD), and an oral ruling by the assigned Administrative Law Judge (ALJ) in the rate proceeding, petitioner began to inform its customers of this

emergency petition by bill insert notice according to its internal billing cycles. Bill insert notice is scheduled for completion on April 14, 1989. A published notice is scheduled for April 12, 1989 to ensure that the public is informed at least ten days in advance that public witness hearings will be held on April 25, 1989. Evidentiary hearings are tentatively scheduled in San Francisco on April 24 and 26.

On March 6, 1989, petitioner filed its mandatory rationing plan. (Advice Letter No. 216.)

One month later, District revised its previous mandate for a 45% water reduction to 25% due to the grant by the U.S. Bureau of Reclamation (Bureau) of 80% of District's normal water allotment. The Bureau left open the possibility that more water could be allotted by mid-April should District meet the Bureau's "hardship" requirements. District considers precipitation and runoff during March as eliminating the worst-case scenario in its contingency plans. District will not know for two or three months if the 25% rationing can be scaled back. However, District is not willing to declare an end to the drought since there are still areas in the Santa Clara Valley that will be under stress.

Petitioner notified the assigned ALJ of this new development and subsequently amended its petition and advice letter to reflect a 25% water reduction. Petitioner subsequently agreed that its published notice scheduled for April 12 will explain that the emergency request is now 25%, not 45%, giving the time and place of public hearings in San Jose. Petitioner's amendment to the petition indicates that, with the exception of obtaining Commission approval, it has now met all requirements under the Water Code Sections 350 et seq. to implement its water rationing plan.

The Petition And Amended Petition

Petitioner indicates this is the third year of the drought. This year total precipitation is less than 55% of normal

with no prospect of any significant rainfall this spring since the rainy season is almost over. Petitioner's usable surface supplies contain less than 31% of their total capacity. District is the principal wholesale water supplier in the Santa Clara Valley in which petitioner's service territory is located.

Petitioner considers the effect on its earnings of a 25% sales reduction due to immediate mandatory rationing to constitute an immediate financial emergency. Petitioner anticipates a drop in earnings from \$2.50 per share in 1988 to \$1.37 per share in 1989. A Summary of Earnings upon which this calculation is based is attached to the Petition as Revised Exhibit A. Petitioner calculates its revenue shortfall due to 25% rationing to be 14.8%. The aggregate amount of the increase requested is \$7,763,000. Petitioner's calculations of average monthly and average annual sales per customer are attached to the Petition as Revised Exhibit B.

Proposed rate schedules for General Metered Service and Resale Service with revised quantity charges are attached to the Petition as Revised Exhibit C. The proposed emergency increase will be shown as a separate surcharge on the General Metered Service and Resale Service Schedules. No increase in any other rate schedules is proposed.

Petitioner expects that the actual reduction in sales during rationing will be different than the mandated conservation levels. Therefore, petitioner requests authority to establish a memorandum account effective April 1, 1989, or at the time petitioner's rationing plan becomes effective, for the purpose of accruing revenue losses and changes in related expenses due to rationing.

Petitioner outlines the proposed memorandum account procedures. The differences in recorded sales and sales allocated under the mandatory rationing plan each month will be multiplied by a net revenue per ccf to arrive at a monthly undercollection or

overcollection. Changes in petitioner's rates or changes in purchased water or power rates subsequent to the date rationing begins will result in changes in the net revenue figure effective on the date of cost changes. Cumulative overcollections or undercollections will be amortized by petitioner through an advice letter filing at such time as over or undercollections exceed 2% of annual revenue or this memorandum account procedure is terminated.

In the amended petition, the request to credit penalties collected under mandatory rationing to this account was withdrawn. Petitioner proposes that penalties be held in the "suspense account" requested in Advice Letter No. 216 for further disposition rather than credit these amounts in the memorandum account. Petitioner believes this treatment will avoid disincentives in conservation.

For purposes of its emergency petition, petitioner adopts staff's estimates for 1989 sales and rate of return which have been presented in the pending rate proceeding. (Exh. 16.) In its petition, petitioner adjusts taxes and uncollectibles to include the proposed emergency increase, uses tax rates for 1989 and incorporates the impact of the Tax Reform Act of 1986 approved by the Commission in D.88-01-061. However, petitioner reserves the right to continue to challenge staff's consumption and rate of return estimates in the rate case.

In essence, petitioner requests three forms of relief: 1) an ex parte order, effective April 1, 1989, authorizing the establishment of a memorandum account to accrue losses and gains in revenues (using the method of calculation outlined above), and reductions or increases in purchased water and power expenses resulting from changes in sales; 2) an expeditious hearing on the petition; and, 3) an interim rate decision authorizing the

establishment of a rate surcharge and procedures for rate recovery due to mandatory rationing.¹

CACD's Position

In order to expedite matters, CACD indicated its position on the Petition For Emergency Relief on the record during the rate case proceeding. CACD does not oppose the establishment of a memorandum account, effective April 1, 1989 to track revenues, sales and sales related expenses as rationing occurs. However, staff opposes ex-parte relief regarding all other issues raised in the emergency petition, such as the reasonableness of these expenses, and the amount and procedures for recovery of any surcharge.

Discussion

In 1977 the Commission was forced to act swiftly during hearings on conservation to approve both mandatory rationing where needed and to provide expeditious regulatory mechanisms to make water utilities whole for the revenue losses conservation would bring. (Case No. 10114, D.86959, issued February 20, 1977.) Ten years ago we were in the middle of hearings and had received evidence on weather conditions and recommendations for relief before the water shortage reached a crisis stage requiring rationing. Although the timing of petitioner's request comes before any evidence in our present investigation on water conservation, I.89-03-005, the urgency of the situation is the same.

The Santa Clara Water District has declared a drought in its county based upon a lack of rain and less than normal water allocations from its water suppliers. District cannot predict whether the present rain and snow in Northern California will

¹ Hearings in the rate case were concluded on March 17, 1989. Concurrent briefs are due April 24, 1989.

eliminate this crisis or whether District will qualify for additional Bureau water due to hardship conditions. Therefore, District has reaffirmed its request for immediate cutbacks but reduced the degree of cutbacks to 25%.

In compliance with District's mandate, petitioner seeks to implement water rationing immediately in its service area and at the same time receive authority to record any revenue losses that may ensue. Petitioner represents that it has met the public notice and hearing requirements of Water Code 350 et seq. needing only our approval for rationing to be effective.

We agree that this Commission should not stand in the way of District's mandate for immediate rationing or petitioner should have a vehicle to record any revenue losses pending hearings on these issues. However, the extent of relief to be granted on an emergency basis is questioned by CACD. CACD does not oppose granting authority to establish a memorandum account, if that is the only relief granted ex-parte. CACD is not willing to forego a reasonableness review of expenses contained in this account, a review of the amount of the rate surcharge, scrutiny of the proposed procedures for placing these expenses into rates or the methodology for terminating the memorandum account.

We agree that the timing of this request to establish a memorandum account is different than any we have previously encountered. In the past, when we have granted authority to establish memorandum accounts, our actions were preceded by hearings addressing the need for such accounts and procedures for placing these expenses into rates. We also made the expenses subject to later reasonableness review. (D.88-09-020, D.88-08-022 and D.88-07-059.) We believe the conclusions we reached on notice, hearings and retroactive ratemaking in prior energy cases are equally applicable to water utilities, even though we may later conclude that the operation and procedures for memorandum account treatment should be different.

In this proceeding, neither the Commission or CACD has concluded what procedures are best for rate recovery or the extent of rate recovery to be authorized due to the water crisis. Petitioner has confirmed that authority to establish a memorandum account is the only ex-parte relief it is requesting. Petitioner does not intend to avoid a reasonableness review or hearing on other issues by requesting an ex-parte memorandum account with proposed procedures for rate recovery. Petitioner agrees that hearings should be held on all other issues raised by its petition, but still requests expeditious treatment.

We agree that a memorandum account is the appropriate solution to the immediate concerns of District, petitioner, CACD and the public in this proceeding. It gives petitioner the opportunity to later recover expenses and revenue losses due to rationing without actually placing these amounts into rates until the degree of recovery and best mechanism to do so are ascertained. By authorizing the separation of these expenses for disposition at a future date, the utility is not prohibited by retroactive ratemaking from recovering reasonable expenses and revenue losses in rates at a time when they can be calculated and reviewed.

(D.88-07-059.) This mechanism preserves the opportunity for a utility to later achieve rate recovery while protecting the ratepayer from bearing the burden of unreasonable costs.

(D.88-09-020.) Our past experience with water rationing is that revenue losses do occur. (D.87398.) Therefore, in order to meet the present crisis and as an interim measure, we shall authorize petitioner to segregate revenues, sales and related expenses in one memorandum account and hold separately in another memorandum account penalties collected under the mandatory rationing program until further order of this Commission. Penalties shall not be included in the calculation of over or undercollections until we can explore this issue in further proceedings. Although we grant petitioner's request for memorandum accounting treatment, this

authority cannot be pre-dated to the requested April 1st effective date due to the prohibition against retroactive ratemaking. Petitioner understands that Commission notice requirements prevented Commission action on this matter until today.

The proposed method of rate recovery, the amount of recovery, the termination of the memorandum account and all other issues raised by this petition must be explored in further proceedings. The issues raised in this petition are the same or related to those in I.89-03-005. In that investigation, we requested that the public and a very broad-based group within the water industry address "the need for and magnitude of rate adjustments to accommodate utilities' increased conservation expenditures and sales reductions." (Order, p. 2.) To avoid duplication of effort in this docket and I.89-03-005, and to assure that our findings on these issues are consistent throughout the state, we shall consolidate the emergency petition with I.89-03-055, including the public witness hearing scheduled in San Jose. We shall not vacate the date of April 25, 1989 since the public affected by mandatory rationing has a right to be heard expeditiously.

In this docket we will settle the dispute between petitioner and staff over customer consumption and rate of return for 1989, 1990, and 1991. The consumption and rate of return adopted in a final order in this proceeding will be used to modify, if necessary, the calculations authorized for use in petitioner's memorandum account.

Findings of Fact

1. Santa Clara Water District has declared Santa Clara County to be in a state of drought. The District has issued an emergency mandate throughout the county for an immediate 25% reduction in water consumption. District is unable to predict when this crisis will end.

2. Petitioner requests ex parte interim authority to establish a memorandum account to accrue the effects of 1989 sales reductions under specific methodology and procedures. Petitioner requests an interim rate decision, after a hearing, establishing a rate surcharge of 14.8% due to mandatory rationing. Petitioner requests authority to file an advice letter to adjust rates. Simultaneous with this request, petitioner requests that its mandatory rationing plan be approved. (Advice Letter No. 216.)

3. Notice to petitioner's customers of this emergency petition began on March 17, 1989 and will be completed on April 14, 1989. Petitioner shall publish a notice of the amended petition on April 12, 1989. Public witness hearings on the emergency petition and its amendment are scheduled for April 25, 1989 in San Jose.

4. Petitioner's service territory is in Santa Clara County. Santa Clara Water District is a major source of supply for petitioner.

5. The implementation of mandatory rationing threatens to cause petitioner's sales and earnings to be reduced by an amount which is unknown until rationing occurs.

6. CACD does not oppose the establishment of a memorandum account for revenues, sales, related expenses and penalties where CACD's estimated 1989 consumption and rate of return is used pending a hearing on all other issues raised in the emergency petition and a final decision in the rate proceeding.

7. A public hearing on the establishment of a memorandum account is not necessary since rates are not immediately affected by such action.

Conclusions of Law

1. Petitioner's request to establish a memorandum account to accrue the effects of sales reductions due to water rationing should be granted ex-parte.

2. All other issues raised in the emergency petition should be consolidated with I.89-03-055 for further hearing.

3. Since revenue losses are threatened from the time rationing begins, the effective date of this order should coincide with the effective date of the resolution approving petitioner's mandatory rationing plan (Advice Letter No. 216.)

ORDER

IT IS ORDERED that:

1. Petitioner shall establish a memorandum account to accrue changes in revenues, sales, sales-related expenses and penalties due to the mandatory water rationing plan (Advice Letter No. 216) until further notice by this Commission under the following conditions:

- a. Petitioner shall use CACD consumption and rate of return estimates contained in Exhibits 16 in calculating over and undercollections. Petitioner's proposed method of calculating over and undercollections shall be used as an interim measure.
- b. No costs or expenses incurred prior to the date of this order shall be included in the memorandum account.
- c. This interim measure shall not prejudice any issues in the petition.
- d. The reasonableness of costs and expenses included, methodology of calculating costs and terminating the account, procedures for placing costs into rates and any other issues raised in the petition shall be consolidated with I.89-03-005. No costs, expenses or penalties contained in the memorandum account shall be placed into rates prior to Commission authorization.

2. Public participation hearing scheduled for April 25, 1989 regarding this emergency petition shall be consolidated with I.89-03-005.

3. Petitioner shall serve on all parties in I.89-03-005 a copy of the Petition For Emergency Relief and Amendment filed in this proceeding within 15 days after this decision is effective.

4. The Commission's Executive Director shall serve a copy of this decision on all respondents in I.89-03-005.

This order is effective today.

Dated APR 12 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda
being necessarily absent, did
not participate.

Commissioner Patricia M. Eckert
present but not participating.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weiss, Executive Director