

Decision 99-02-078 February 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation and Suspension
on the Commission's Own Motion of Tariff Filed
by Advice Letters 287 and 287-A of San Jose
Water Company in Santa Clara Company.

(I & S)
Case 97-08-004
(Filed August 1, 1997)

OPINION

Summary

This order approves the settlement agreement between Garcia Development Company (Garcia) and San Jose Water Company (San Jose). Pursuant to the settlement agreement, San Jose will provide Garcia raw water at an initial rate of \$434.12 per acre-foot, which is equivalent to the rate for recycled water charged to irrigation customers.

Procedural Background

On September 8, 1998, the Commission issued Decision (D.) 98-09-044 in which it granted limited rehearing of D.98-05-057:

Rehearing is strictly limited to evaluating the reasonableness of the proposed rate based on the figures from San Jose's last rate case. From those figures, it should be determined whether the proposed rate will yield the necessary utility revenue to provide a fair rate of return and adjustments made, if necessary.

Ordering Paragraph 1. Specifically, the decision on rehearing found that protestant Garcia was entitled to notice and an opportunity for hearing concerning the figures from the earlier rate case and the raw water cost of service analysis.

On December 21, 1998, Garcia and San Jose filed a joint motion for approval of a settlement agreement which resolved all outstanding issues between the parties. The Settlement Agreement¹ is Attachment A to this decision. San Jose also filed Advice Letter 311 on December 16, 1998, which included the settlement agreement for filing as a tariff. By ruling of the assigned Administrative Law Judge, the advice letter was consolidated with this proceeding.

Description of the Settlement Agreement

The major provisions of the settlement agreement are:

1. Deliveries - All deliveries of raw water from San Jose to Garcia re preconditioned on the availability of supplies to San Jose, and San Jose shall not be liable for any service interruptions.

2. Rate - The commodity rate applicable to Garcia's facilities shall be San Jose's "Tariff Schedule 1 General Metered Service" less (1) Santa Clara Water District's per acre-foot treated water surcharge, (2) South Bay Water Recycling Program's irrigation discount, not to exceed \$80, and (3) any golf course discounts made available to San Jose by Santa Clara Water District. The rate is further limited in that it may not be less than the rate for recycled water to irrigation customers. The initial rate shall be \$434.12 per acre-foot.

3. Facilities - Garcia will transfer the currently existing turn out facilities, including meter equipment and easements, to San Jose as partial consideration for the settlement agreement. Garcia will be served through these facilities.

¹ The Settlement Agreement was executed by The Golf Club at Boulder Ridge, a California corporation, which is wholly owned by W. Rocke Garcia and Glenda L. Garcia, the owners of Garcia Development Company. Garcia represents that the agreement addresses the issues raised by Garcia in this proceeding and Garcia seeks approval of the agreement.

Discussion

Rule 51(e) of the Commission's Rules of Practice and Procedure 51(e) requires that settlement agreements be (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest to be approved by the Commission.

a. Reasonable in Light of the Whole Record

The record in this case reveals a dispute between San Jose and Garcia over the rate Garcia should pay for raw water. San Jose filed an advice letter setting the rate at \$487.09, which Garcia protested, contending that the rate should be \$240. In D.98-05-057, the Commission found San Jose's proposed rate reasonable and lawful. On rehearing, the parties have arrived at an agreed-upon rate of \$434.12.

In D.98-05-057, the Commission evaluated San Jose's proposed rate in several ways. One comparison was to San Jose's rates for recycled water (\$430), raw water (\$487), and potable water (\$557) for irrigation users. The Commission found that the proposed rate for raw water should be less than that for potable water because it is of lesser quality but higher than recycled water to encourage the use of recycled water. The proposed settlement rate of \$434.12 falls within this range.

The Commission also stated that the rate for raw water should continue to recover its share of San Jose's fixed costs. To do so, the Commission determined that a rate of approximately \$470 per acre-foot was necessary. Although the settlement agreement rate is 7.6% less than \$470, this minor difference is sufficiently supported by San Jose's need to quell Garcia's stated threat of bypassing the San Jose system by drilling a well.

b. Consistent with the Law

None of the actions required by the settlement agreement, as amended, are in violation of any statute or Commission rule or regulation.

c. In the Public Interest

The Commission is responsible for ensuring that all water company rates are just and reasonable. In this case, the rate falls within a range the Commission had previously recognized. The rate also maintains nearly all the customers' contribution to fixed costs. Moreover, the agreement does so without the expense of further litigation.

For these reasons, the Commission finds that the settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The agreement is approved pursuant to Rules 51 through 51.10 of the Commission's Rules of Practice and Procedure. (See also *San Diego Gas & Electric Company*, 46 CPUC2d 538 (1992)(rules for all-party settlements).)

Findings of Fact

1. The Commission granted limited rehearing on the issue of using figures from San Jose's last rate case.
2. The parties reached a settlement agreement which is Attachment A to this decision.
3. The settlement agreement resolves all matters relating to this proceeding.
4. San Jose Advice Letter 311 was consolidated with this proceeding by ruling of the assigned Administrative Law Judge.

Conclusions of Law

1. The settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

2. The settlement agreement should be approved.
3. In order to assure prompt compliance with the terms of the settlement agreement, and to quickly obtain the benefits of the settlement agreement for California consumers, this order should be made effective immediately.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The settlement agreement affixed hereto as Attachment A and made a part hereof is approved, and the parties are directed to comply with the terms set forth in the settlement agreement.
2. San Jose Water Company Advice Letter 311, which submits the Settlement Agreement as a special contract, is hereby approved.
3. This proceeding is closed.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

AGREEMENT

THIS AGREEMENT is made and entered into this 15 day of December, 1998, by and between SAN JOSE WATER COMPANY, a California corporation, hereinafter "SJWC", and THE GOLF CLUB AT BOULDER RIDGE; a California corporation, hereinafter "GCBR":

RECITALS

Whereas, GCBR plans to develop a golf course and related facilities on land owned by it within the specific project area set forth on Exhibit A; and

Whereas, GCBR desires to obtain, on a permanent basis, raw untreated water from the Santa Clara Valley Water District, hereinafter "SCVWD", for both agricultural and non-agricultural uses in the operation of its golf course facility within the specific project area set forth on Exhibit A; and

Whereas, GCBR plans to construct a reservoir ("fire suppression reservoir") for supplying raw untreated water for fire suppression purposes.

Whereas, SJWC is a regulated public utility which asserts that the GCBR project area is within SJWC's water service area boundary, as that boundary is filed with the Public Utilities Commission of the State of California, and that SJWC has the exclusive right to provide retail water to the specific project area; and

Whereas, SJWC represents that it has obtained a surface water diversion permit authorizing SJWC to divert raw untreated water from SCVWD's existing pipeline facility to GCBR at the location set forth on Exhibit B.

Whereas, SJWC is willing to purchase raw untreated water from SCVWD for resale to GCBR upon terms and conditions hereinafter set forth; and

Whereas, SJWC and GCBR wish to resolve potential differences and present conflicts between them concerning the sale of raw untreated water for use on the subject property;

NOW, THEREFORE, the Parties hereto agree as follows:

1. All deliveries of untreated water by SJWC to GCBR are preconditioned upon the availability of supplies provided by SCVWD. SJWC shall not be liable to GCBR, or its successor and assigns, for any claims based upon interruptions in delivery or failure to supply untreated water due to supply limitations or other restrictions imposed by SCVWD.
2. SJWC shall acquire and divert all untreated water for delivery to GCBR only at the location described in Exhibit B.
3. GCBR agrees that for the life of this Agreement, GCBR shall grant to SJWC a non-exclusive easement for ingress and egress to the turnout facility in a form similar to that set out in Exhibit C hereto. If the Agreement is terminated, SJWC shall promptly quitclaim its rights under the non-exclusive easement to GCBR.
4. The parties mutually agree that the present fair market value of the real and personal property interests comprising the turnout facility, meter equipment and easements described above is \$20,000. As partial consideration for this agreement, GCBR agrees to transfer these assets to SJWC without further monetary compensation.
5. SJWC will deliver all raw untreated water under this agreement to GCBR at the discharge end of the presently existing meter.

6. Unless specifically required by a SCVWD permit or any local, state or federal governmental authority, SJWC will not install nor shall it be responsible for cross-connection devices between SCVWD and GCBR facilities. Should the installation, maintenance and testing of a cross-connection device ever be required, the costs of such installation, maintenance and testing shall be charged as an additional cost to GCBR.

GCBR agrees and warrants that it will not allow or cause to occur cross-connections between GCBR's untreated water distribution system and the potable system of SJWC during the construction, extension, modification, operation or repair of its untreated water distribution pipelines or facilities.

7. During the term of this Agreement, GCBR shall pay all costs imposed by any and all governmental agencies having jurisdiction over the quality or use of raw untreated water for the issuance of any permits, licenses or approvals required for the use of such water by GCBR.

8. GCBR shall be solely responsible for the installation, maintenance, operation and repair of its receiving and distribution facilities on its side of the point of connection referred to above in Paragraph 6.

9. Should SCVWD relocate or terminate its raw untreated water pipeline facility, this contract will immediately become voidable at the option of either party.

10. SJWC will deliver raw untreated water at the point of connection only at such pressures as provided by SCVWD. SJWC shall not be obligated to pump or pressurize water at the point of connection and is not warranting to provide any regular operating water pressure to GCBR at the point of connection.

11. The parties acknowledge that by providing raw untreated water at the point of connection SJWC is not contracting to provide water for fire suppression or a fire service for GCBR or the specific project area set forth on Exhibit A. SJWC shall not provide storage tanks or emergency pumping facilities for the benefit of GCBR.

12. GCBR shall be responsible for all water used for filling the fire suppression pond and for all water consumed by transvaporation. A credit will be provided to GCBR for any water used for fire suppression purposes. The amount of the credit will be based upon the fire agency's estimation of the volume of water used multiplied by the then current commodity rate. The estimate of water used for fire suppression purposes submitted by GCBR shall be certified by the fire agency.

GCBR agrees and warrants that it will not allow or cause to occur cross-connections between GCBR's fire protection reservoir and GCBR's raw untreated water irrigation distribution system.

13. GCBR acknowledges and agrees that all raw untreated water delivered pursuant to the agreement is only to be used for the purposes of GCBR exclusively on the lands described in Exhibit A and any adjacent lands which are used by GCBR for golf club related purposes. Any resale or off-site use of the raw untreated water will make this agreement immediately voidable at the option of SJWC.

14. SJWC expressly makes no representation as to the quality of the raw untreated surface water delivered to GCBR at the point of connection, or as to whether or not it is advisable to use such water in its untreated state for any form of agricultural or domestic use or consumption; and GCBR agrees that it shall be responsible for the safe, appropriate use of all such raw untreated water delivered to it by SJWC.

15. GCBR hereby releases SJWC and agrees to save and hold harmless SJWC from any and all claims and demands for damages which may be made upon SJWC arising out of the use and disposition by GCBR of any and all untreated water; and GCBR further agrees to save and hold harmless SJWC from any and all claims and demands that may be made upon it for damages or personal or property injuries of whatever kind or nature, arising out of any and all use of said raw untreated water past the point of connection, out of failure of the raw untreated water supply, or out of interruption or failure of service, or by reason of the amount and quality of the raw untreated water supply. GCBR further agrees that it will obtain from the State Department of Health Services a permit for any water it treats and uses for domestic water.

16. GCBR agrees to pay SJWC for the total raw untreated water delivered each calendar month and a monthly service charge for metered service. The rates for such service are set forth on Exhibit D. SJWC will bill GCBR on a monthly basis for water used and any monthly service charges.

17. SJWC may, during its normal course of business, change its rates and/or charges to GCBR, as set out in Exhibit D. Such changes will be effective only after thirty (30) days written notice to GCBR. Any changes to the rates and/or charges to GCBR shall be made part of this Agreement by addenda to Exhibit D.

18. GCBR may terminate this agreement upon 90 days written notice to SJWC. SJWC may terminate this agreement upon 90 days written notice of any default by GCBR, its successors and assigns under this agreement, and subsequent failure of complete and timely cure by GCBR within the 90 day period.

19. Any waiver at any time by either party of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be

a waiver with respect to any other default or matter. None of the covenants or agreements herein contained can be waived except by the written consent of the waiving party.

20. All notices to be given or sent by either party to the other, shall be in writing and sent by United States mail, registered or certified, postage prepaid. Notice will be deemed received five (5) days after the date of mailing.

If intended for GCBR, notices shall be addressed to:

Rocke Garcia
Golf Club at Boulder Ridge
P.O. Box 910
Morgan Hill, CA 95038-0910

If intended for SJWC, notices shall be addressed to:

Corporate Secretary
San Jose Water Company
374 West Santa Clara Street
San Jose, CA 95196-0001

Any party may, by written notice to the other, change the address at which such notices are to be sent.

21. This Agreement and all the terms and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

22. In addition to the above, GCBR shall save SJWC and its officers, agents and employees harmless from and against and shall indemnify SJWC from any liability, loss, costs, expenses or damages however caused by reason of any injury (whether to body, property, or personal or business character or reputation), including any injury based on product liability, environmental damage or contamination, or health-related claims, sustained by or to any person by reason of any act, neglect, default, or omission of GCBR or any of its agents, employees, or representatives, or caused by reason of the design or construction of the facilities, or the

distribution by GCBR of raw untreated water; provided that GCBR shall not be responsible for the negligent operation, maintenance or repair of SJWC facilities.

23. In addition to the above, SJWC shall save GCBR and its officers, agents and employees harmless from and against and shall indemnify GCBR from any liability, loss, costs, expenses or damages however caused by reason of any injury (whether to body, property, or personal or business character or reputation), sustained by or to any person by reason of any act, neglect, default, or omission of SJWC or any of its agents, employees, or representatives; provided, however, and notwithstanding the foregoing, SJWC shall not be responsible for any personal injury or property damage based on product liability, environmental damage or contamination, or health-related claims of any kind resulting from the receipt, use, or distribution of raw untreated water by GCBR or its successors and assigns, nor shall SJWC be responsible for the negligent operation, maintenance, repair, or vandalism of GCBR facilities by non-SJWC forces.

24. If either party to this Agreement commences legal proceedings to interpret this Agreement or to enforce any of its terms or for damages for its breach, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

25. This Agreement shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction. All changes or modifications by the Public Utilities Commission of the State of California to this Agreement shall require mutual written agreement of the Parties.

26. The term of this Agreement shall commence on the execution written last below.

IN WITNESS WHEREOF, the parties hereto, SJWC by its officers thereunto duly authorized, have executed in duplicate, the foregoing Agreement the day and year last first above written.

SAN JOSE WATER COMPANY

Dated: _____

By [Signature]
Vice-President

Dated: 12/15/98

By [Signature]
Secretary

THE GOLF CLUB AT BOULDER RIDGE

Dated: _____

By [Signature]
President

Dated: _____

By [Signature]
Secretary

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- EXHIBIT A: Map of GCBR project area
- EXHIBIT B: Location of turnout
- EXHIBIT C: Easement for ingress and egress
- EXHIBIT D: Rate schedule

ENCROACHMENT PERMISSION LETTER

SUBJECT: Meter, Meter Box & Service Installation
LOCATION: Golf Club at Boulder Ridge
FOR: Water Facilities

Consent is hereby given for San Jose Water Company to encroach upon our property to install and maintain its facilities and for meter reading purposes.

The signature(s) below indicates agreement to this consent.

ATTACHMENT A
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GOLF CLUB AT BOULDER RIDGE

By: W. Roque Garcia
Signature

W ROQUE GARCIA
Print Name

By: _____
Signature

Print Name

Dated: _____

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EXHIBIT DCommodity Rate:

The commodity rate applicable to GCBR will be based on SJWC's Tariff Schedule No. 1, "General Metered Service," in effect from time to time, subject to the following three adjustments:

1. The commodity rate will be reduced by the hundred cubic feet ("CCF") equivalent of the Santa Clara Valley Water District's per acre foot treated water surcharge.
2. Initially, the commodity rate will be further reduced by \$80.00, which represents the CCF equivalent of the discount given to irrigation users by the South Bay Water Recycling Program ("SBWRP") in effect at the time this AGREEMENT is entered into by the parties. Thereafter, the commodity rate will be increased or reduced by the CCF equivalent of the SBWRP discount for irrigation users but at no time shall the SBWRP discount for irrigation users applied to the commodity rate be greater than \$80.00
3. The commodity rate will be further reduced by the CCF equivalent of any credits and/or discounts made available to SJWC by SCVWD for the irrigation of golf course facilities.
4. In no case shall the effective commodity rate for raw water served pursuant to this Agreement be less than the effective rate for recycled water to irrigation customers.

Water Used for Fire Suppression:

There will be no charge for water used from GCBR's fire suppression reservoir for fire suppression.

Service Charge:

The meter service charge will be equal to SJWC's Tariff Schedule No. 1, "General Metered Service," rate for a four inch meter, in effect from time to time.

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(END OF ATTACHMENT A)