

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION
Water Utilities Branch

RESOLUTION NO. W-3947 **
November 8, 1995

RESOLUTION

(RES. W-3947), SAN JOSE WATER COMPANY (SJWC). ORDER
AUTHORIZING ESTABLISHMENT OF A MEMORANDUM ACCOUNT FOR
RECORDING CHARGES RESULTING FROM A 2% FRANCHISE FEE IMPOSED
BY THE CITY OF SAN JOSE ON ALL WATER BILLS AND AUTHORITY TO
FILE ADVICE LETTERS FOR THE RECOVERY OF SUCH CHARGES.

BY ADVICE LETTER NO. 273, FILED JULY 14, 1995.

SUMMARY

This resolution authorizes SJWC to establish a memorandum account to record charges resulting from the addition of a 2% franchise fee imposed by the city of San Jose on all water bills billed to customers within the city of San Jose. SJWC indicated that it was in the process of preparing litigation to overturn the city of San Jose's ordinance with regard to the franchise fee. The memorandum account will track the franchise fee charges pending the outcome of that litigation.

BACKGROUND

The San Jose City Council in its meeting of June 20, 1995, passed Ordinance No. 24931 imposing a 2% franchise fee on all potable water franchises within the city limits of the city of San Jose. The franchise is effective July 27, 1995, and is payable on a monthly basis.

DISCUSSION

SJWC requests Commission authorization to establish a memorandum account for recording charges resulting from the addition of a 2% franchise fee imposed by the city of San Jose on all water bills billed to customers within the city of San Jose. The franchise fee is assessed by cities and allows utilities to install water facilities in public streets and thoroughfares. SJWC claims that it has a constitutional franchise dating from at least 1891, before the city was incorporated, and that the city of San Jose can not legally impose any new franchise or new franchise fees on SJWC's operation. Pursuant to Commission Decision 89-05-063, SJWC is authorized to file an advice letter to seek recovery of the franchise fee through a direct surcharge on customer bills. However, SJWC indicated that, in the interest of protecting its customers, it was in the process of preparing litigation to overturn the city of San Jose's ordinance. SJWC requests that until the litigation is resolved, no city of San Jose franchise fees be collected from its customers. In the meantime, SJWC is requesting Commission authorization to establish a

memorandum account in order to track the franchise fee charges until the outcome of that litigation is decided.

NOTICE AND PROTEST

Public notice is not required at this time. If and when SJWC seeks recovery of expenses recorded in the memorandum account, public notification will be required as prescribed in the advice letter procedures of General Order No. (G.O.) 95-A.

FINDINGS AND CONCLUSIONS


1. SJWC should be authorized to establish a memorandum of account in which to record payments of the city of San Jose's franchise fee.
2. If the outcome of the litigation is not in SJWC's favor and SJWC is ordered by the appropriate court(s) to pay the franchise fee, subsequent to recording such payments in the memorandum account, SJWC should be authorized to file an advice letter under the provisions of G.O. No. 96-A requesting recovery of the amount in the account once each calendar year.

IT IS ORDERED that:

1. San José Water Company is authorized to establish a memorandum account to record payments of the city of San José's franchise fee and to file an advice letter as prescribed by General Order 96-A requesting recovery of the charges, once each calendar year. The effective date of this advice letter shall be five days after the effective date herein.
2. The memorandum account as authorized above shall remain open until SJWC's general rate case subsequent to resolution of the litigation.
3. This resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on November 8, 1995. The following commissioners approved it:

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners



WESLEY M. FRANKLIN
Acting Executive Director