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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of SAN JOSE)
WATER COMPANY (U 168 W) for an Order)
authorizing it to increase rates charged for water)
service by \$34,288,100 or 9.76% in 2019,) Application No. 18-01-004
by \$14,231,800 or 3.70% in 2020, and by) (Filed January 4, 2018)
\$20,581,700 or 5.17% in 2021)

**Water Rates Advocates for Transparency, Equity, and Sustainability
Comments on Partial Settlement Agreement Between the Office of
Ratepayer Advocates and San Jose Water Company on Issues Presented
in the General Rate Case Application**

WRATES (Water Rate Advocates for Transparency, Equity, and Sustainability)
by William J. Sherman
1174 Old Oak Dr. San Jose, CA 95120
Tel: 408-268-3694
email: sherman_w@sbcglobal.net
FAX: 408-268-3694

September 10, 2018

1 Pursuant to Rules 12.2 and 12.1 of the California Public Utilities Commission (“Commission”)’s Rules
2 of Practice and Procedure (“Rules”), the Party to the proceeding, Water Rate Advocates for
3 Transparency, Equity, and Sustainability (WRATES) submits these comments in this General Rate Case
4 (“GRC”).

5
6 WRATES has chosen not to join the Settlement. As a Party to the Proceedings, and in accordance with
7 Rule 12.2 of the Rules, WRATES does not oppose the Proposed Partial Settlement Agreement Between
8 the Office of Ratepayer Advocates and San Jose Water Company on Issues Presented in the General
9 Rate Case Application dated August 10, 2018. In general, we support the approaches taken by ORA in
10 supporting ratepayers in reaching this settlement.

11
12 Our comments herein focus on supplemental information that we believe can be useful by the
13 Commission to assure reasonableness of the settlement, and to assure that its approval is in the public
14 interest¹.

15 The proposed rate design² does not influence the settlement but instead only determines how the settled
16 amount is applied to ratepayers' bills. WRATES has chosen to summarize our recommendations³ on that
17 portion of the application here for consideration of the ALJ and the Commissioners.

18
19 WRATES has further investigated the two remaining contested issues.⁴ We have included factual
20 information in our Brief⁵. We summarize our recommendations for consideration herein to aid the
21 Commission in ensuring that their final decision is in the public interest. Our comments follow.

22

23

Partial Settlement

24

Topic II. C. Proration Refund. (SM-16)

25

26
27 WRATES reluctantly accepts the settlement reached between ORA and SJWC yielding a refund for a
28 longer period than the three years originally proposed in advice letter 510. This settlement expanded the

1. CPUC Rules of Practice and Procedure, Rule 12.1 (d).

2. A1801004 Scoping Memorandum dated 6/28/2018, Section 2.9., p. 4.

3. A1801004, WRATES Opening Brief, p. 27:16-22.

4. Partial Settlement Agreement between ORA and SJWC dated August 10, 2018, p. 2, section I. I. 1 and 2.

5. A1801004, WRATES Opening Brief, Section V.A. pp. 9:21-14:18; Section V.B. pp. 14:20 – 16:26'

1 period for refunds for allegedly violating PUC Code section 532 from SJWC's originally proposed three-
2 year statute of limitations period January 1, 2014 through December 31, 2016 to also include the period
3 retroactively until June 1, 2011, the date on which SJWC changed their billing system.

4
5 Our acceptance is solely because this portion of a resolution for ratepayers has been delayed already for
6 over 19 months since it was first discovered in January 2017. Without ORA's request to add it to the
7 GRC, it may never have been resolved. We believe that ORA was clear by their testimony that a
8 conclusion to the proration refund was the sole issue to be decided by this section of the GRC and that
9 their request was independent of the actual SJWC application A.18-01-004 for increasing rates.

10
11 WRATES believes there remain enough SJWC billing issues identified during these 19 months to
12 warrant an OII to determine their extent and magnitude outside of the GRC and that this type of
13 resolution still needs to be addressed by various people under oath. WRATES has documented some of
14 these issues more extensively in its concurrent Brief⁶. These include:

- 15 (1) The settlement is limited to the period of June 1, 2011 to December 31, 2016 due to San Jose
16 Water Company's change in billing system, yet WRATES has customer bills from as long ago as
17 1985 showing that the same violations existed then.
- 18 (2) In a letter from the CPUC Water Department to Palle Jensen of SJWC, dated May 8, 2017⁷ Rami
19 Kahlon, Director, proposed a penalty of \$15,766,000 for the seven identified rate changes in the
20 three-year period, 2014-2016. This was not addressed in the GRC settlement nor is WRATES
21 aware of information or discussion concerning penalties.
- 22 (3) At the encouragement of Richard Rauschmeier of ORA⁸, Rita Benton developed and transmitted
23 a complaint for filing on April 17th. It was filed on June 7th. On June 6th, SJWC had responded
24 to Mr. Kahlon's May 8th memo by issuing advice letter 510 which ORA protested on June 23rd.
25 In the ORA protest⁹, they recommended consolidating the relevant issues in the advice letter and
26 the formal complaint within the scope of an OII "... to afford due process of law and preserve
27 the integrity of the regulatory process."
- 28 (4) On July 24th, SJWC answered the complaint by denying the stated violation. This document

6. A1801004, WRATES Opening Brief, Section IV.A., pp.7:13 – 9:17.

7. ORA – 01, p.36, footnote 111 (Attachment 9).

8. C1706009, Part 3of 3, April 12, 2017 letter from Richard Rauschmeier to Rita Benson.

9. WRATES - 05, p. 2.

1 clearly appears to point out why resolution has been delayed so long and why even an OII could
2 be unsuccessful for ratepayers. While SJWC refers to their business practices, it is highly
3 unusual for a company of this type and size to have written controlled documentation relevant to
4 the specific business practice referenced although they assert that they do have them. WRATES
5 questions that if SJWC does not have documented business practices for review, whether the
6 CPUC can properly do their job as regulator.

7 WRATES is comprised of individual customers, unfunded, with no access to legal or financial
8 representation, and no profit motivation if successful other than savings, which will also accrue
9 to other similar customers through rate reductions. There is little chance that WRATES could
10 prevail in an OII against the SJWC legal representatives, which all customers pay for. This
11 despite WRATES having searched through many obscure areas and developed detailed back-up
12 information in most of the areas that were considered in the SJWC Answer to Complaint C.17-
13 06-009 to be vague, unfounded, ambiguous, or unsubstantiated.

- 14 (5) WRATES believes that alleged investigative actions within the CPUC Enforcement Branch since
15 the SJWC Answer, can add to the information necessary to resolve the complaint fairly for both
16 the Company and the consumers. WRATES respectfully requests that ongoing actions continue
17 within the CPUC and outside the A1801004 settlement agreement, which should lead to an
18 eventual OII.

19
20 **Topic II. D. Purchased Water, Purchased Recycled Water, Purchased Power and Pump Tax**

21 **(SM-1)**

22
23 WRATES wishes to commend the parties on improving visibility in advance concerning the actual costs
24 ratepayers face due to improved forecasting of the pass-through costs that they will be paying. This is a
25 dramatic improvement in transparency of these costs, which are not directly controlled by SJWC. Today,
26 a balancing account tracks these costs and later, when the Rules allow, the actual costs are recovered by
27 surcharge. This disassociation presently eliminates the advanced notice encouraging conservation that
28 the proposed settlement provides.

29
30 **Topic II. H. Plant** (SM-7)

1 WRATES agrees with the settlement agreement for this GRC as described in this section of the partial
2 settlement.

3 However, we see no indication whether or not key points in ORA's Executive Summary on the
4 Development of an Asset Management Plan¹⁰ and WRATES Final Response concerning our
5 recommended Seismic Analysis¹¹, were included, or excluded from the agreement between the settling
6 parties. We respectfully request that these issues be clarified within the proposed ALJ Decision.

7 WRATES believes the development and use of an Asset Management Plan (including seismic retrofit
8 priorities) for use in future GRC's offers an excellent opportunity for cost reduction.

9 Our position on the potential advantages and improved productivity on this issue is addressed in
10 WRATES concurrent Brief¹².

11 If this approach is agreed on, because of the significant change in regulation entailed, WRATES has
12 pointed out the need for ORA to conduct a performance audit following the Test Year, to assure that
13 there are no unintended consequences related to the change¹³.

14

15 **WRATES' Contested Non-Settlement Issue**

16

17 **Proposed Rate Design (SM-9)**

18

19 The Partial Settlement Agreement addresses the proposed cost to ratepayers that the Commission will
20 decide in response to SJWC's Application A1801004. The proposed Rate Design addresses the
21 methodology of applying associated tariffs designed to accomplish the payment of the approved amount
22 from customers to SJWC. The CPUC has requested consideration of this subject in the current GRC. As
23 such, it is not a part of the proposed Settlement and does not affect the amount of the Settlement.

24 Because of the direct impact on ratepayers, WRATES has chosen to address it here.

25

26 WRATES strongly recommends that the new Rate Design be eliminated from the present GRC due to
27 the deficiencies explained in the WRATES concurrent Opening Brief.¹⁴ We believe SJWC can

10. ORA's Executive Summary, Section IV. A., p.4:5-13.

11. A1801004, WRATES Final Response Testimony dated May 21, 2018, pp. 13:25 (by count)-15:2.

12. A1801004, WRATES Opening Brief, Section VI.C., pp. 28:30 – 29:22.

13. Ibid., Section VI.C., pp. 29:24 – 30:14

14. Ibid, Section VI.B., pp. 20:20 – 27:14

1 temporarily provide an alternate rate design based on modifying the currently approved tariff design to
2 obtain their approved revenue until they can replace their proposed Rate Design with one that
3 adequately complies with D.16-12-026. This can be before or after the decision on A1801004 as long as
4 the rate design corrects most of the deficiencies and is acceptable to the Commission. Accomplishing
5 this using a separate stand-alone Application is acceptable to the CPUC.¹⁵

6
7 The deficiencies that WRATES is most concerned with include:

- 8
- 9 (1) A work paper used to justify maintaining the extent of tier 1 in the proposed rate¹⁶ inadvertently
10 substantiates the proposed value of 0-3 ccf monthly by a calculation showing it should actually
11 be 0-9 ccf. That 0-9 ccf value describes, in the footnote, the amount a family of 4 needs if they
12 used water efficiently and had the appropriate water-efficient fixtures. Therefore, the tier 2 rate
13 charged any occupants above one in each single-family residence, despite efficient indoor use,
14 would increase by at least 50%, solely because of the size of the household.
 - 15 (2) WRATES calculations indicate that SJWC would collect more than double the approved
16 recovery based on the proposed rate design change and would take much more than a year to
17 return the over-collection to ratepayers via a WRAM¹⁷. No substantive disagreement was
18 presented by SJWC.
 - 19 (3) The proposed Rate Design penalizes lesser water users more for each ccf of reduced usage, by
20 charging them a higher price increase and higher percent increase than larger water users.
21 Financially, this appears to penalize customers that use less water, whether or not they conserved
22 historically or are conserving presently.
 - 23 (4) If the CPUC pursues a legal determination of the applicability of CPUC Standard Practice U-7-
24 W to the Rate Design, WRATES strongly believes it will be found to apply. If it does, nearly
25 50% of the total bills, the lowest ones, are in non-compliance with the limitation stated in the
26 Standard, of increasing rate increases for all usage rates to no more than double those of the
27 average user.
 - 28 (5) The proposed rate design is supposed to promote conservation. In addition to the lack of
29 providing any facts concerning how the rate design would impact customers with varying levels

15. D.16-12-026, Proposed Order (6), p. 85

16. A.18-01-004, SJWC Application Exhibit F, WP7-35D

17. A1801004, WRATES Opening Brief, Section V.I.B., pp.21:31 – 22:15.

1 of usage, to customers in advance of the PPH, so that the Commissioner and ALJ could hear their
2 concerns. WRATES found that each additional unit of usage would continue to cost less. With a
3 usage of 15 to 21 ccf, using twice what the typical customer consumes, over 12 % of the bills
4 received will actually be lower with no change in quantity used¹⁸.

5 These and the previous items detailed above have not shown any relationship to encouraging
6 conservation caused by this rate design.

7 (6) There were five other issues of somewhat lesser urgency including the timely proliferation of
8 Advanced Metering Infrastructure that WRATES has described in our concurrent Brief¹⁹. Of
9 significant concern is the statement in Proposed Order (6)²⁰ that requires the Class A Water
10 Retailer to provide analysis and a showing to allow the Commission to evaluate the likely
11 effectiveness of those efforts.

12
13 WRATES has not found any indications of this being done. Combining all these deficiencies and the
14 complexities of correcting them, we could not find a way to support any other alternative than to use a
15 conventional rate structure in this GRC and allow SJWC to propose an effective rate design at their
16 schedule and at their cost and provide the analysis and showing to allow the ALJ and Commissioners to
17 assure the likely effectiveness of their new plan. Accomplishing this should also resolve WRATES
18 recommendation²¹ concerning Scoping Memorandum item 9.

21 **WRATES Position on Settling Parties' Contested Issues**

22
23 WRATES has chosen to support ORA in the first of the two contested issues that is not a part of the
24 settlement. Our supplemental information on the *Memorandum account to follow costs of the FCV*
25 *pressure valve R&D Failed Project (SM-12)* is presented in the concurrent WRATES opening Brief²².
26 WRATES strongly supports ORA's recommendation to deny SJWC recovery of costs in the PRVMA.

27

18. WRATES – 01, summary of values in Table 3, p.10, column 3, from row 15–21 inclusive = 12.63%.

19. A1801004, WRATES Opening Brief, Section V.B., pp. 25:23 – 26:08.

20. Decision D.16-12-026, Proposed Order (6), p. 85

21. A1801004, WRATES Opening Brief, Section V.I.A., p. 20: 5-18.

22. Ibid, Section V.A., pp. 9:21 – 14:18.

1 WRATES is also in agreement with ORA that the Commission should reject SJWC's requests for a Full
2 WRAM (**SM-10**). In addition, as pointed out in the concurrent WRATES Brief.²³, we believe the ALJ
3 needs to reconsider past documentation of ORA, pointing out their concerns on both versions of
4 WRAMs and the SRM proposed to address them, in and the associated Earnings Test, if applicable in
5 this proceeding, in reaching a recommended Commission decision.

6
7

8 Dated September 10, 2018,
9 Respectfully submitted, in accordance with Rule 1.8 (b) of the California Public
10 Utility Commission's Rules of Practice and Procedure California Code of Regulations Title 20, Division
11 1, Chapter 1

12

13 /s/ William J. Sherman
14 William J. Sherman
15 for Water Rate Advocates for Transparency, Equity, and Sustainability
16 1174 Old Oak Dr., San Jose, CA 95120
17 Tel: 408-268-3694
18 E-mail: sherman_w@sbcglobal.net

19

23. Ibid, Section V.B., pp. 14:20 – 16:26.