



August 25, 2017

Proposed Resolution W-5150

Agenda ID: 15960

To: All Interested Persons

Enclosed is Proposed Resolution W-5150 of the Water Division, which affirms the rejection of San Jose Water Company's implementation of a Sales Reconciliation Mechanism and increasing rates due to the reduced authorized sales forecast requested in Advice Letter No. 501. Proposed Resolution W-5150 is scheduled to appear on the September 28, 2017 Commission Meeting Agenda (ID #15960).

The Commission may act on this resolution or it may postpone action until later. When the Commission acts on a proposed resolution, the Commission may adopt all or part of the proposed resolution, as written, or amend or modify the proposed resolution; or the Commission may set the proposed resolution aside and prepare a different resolution. Only when the Commission acts does the resolution become binding.

Interested persons may submit comments on Proposed Resolution W-5150 via email to [Water.Division@cpuc.ca.gov](mailto:Water.Division@cpuc.ca.gov) on or before **September 18, 2017**. Please reference **"Proposed Resolution W-5150" in the subject line.**

Interested persons must also serve a copy of their comments on the utility on the same date that the comments are submitted to the Water Division. If email is unavailable, please submit comments to:

California Public Utilities Commission  
Water Division  
505 Van Ness Avenue  
San Francisco, CA 94102

Comments should focus on factual, legal, technical errors, or policy issues in the proposed resolution.

Persons interested in receiving comments submitted may contact the Water Division at [Water.Division@cpuc.ca.gov](mailto:Water.Division@cpuc.ca.gov) or (415) 703-1133. Please reference "Proposed Resolution W-5150."

/s/RAMI S. KAHLON

Rami S. Kahlon, Director  
Water Division

Enclosures: Proposed Resolution W-5150  
Certificate of Service  
Service List

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## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS  
Water and Sewer Advisory Branch

RESOLUTION W-5150  
September 28, 2017

### RESOLUTION

(RES. W-5150), SAN JOSE WATER COMPANY (SJWC). ORDER  
AFFIRMING WATER DIVISION'S REJECTION OF  
IMPLEMENTATION OF A SALES RECONCILIATION MECHANISM  
(SRM) AND INCREASING RATES DUE TO THE REDUCED  
AUTHORIZED SALES FORECAST REQUESTED IN ADVICE LETTER  
NO. 501.

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By Advice Letter 501-W, filed January 09, 2017.

### SUMMARY

This Resolution responds to a request by San Jose Water Company (SJWC) for Commission review of Water Division's rejection of SJWC's Advice letter No. 501 to implement a Sales Reconciliation Mechanism (SRM). This Resolution affirms Water Division's disposition rejecting Advice Letter No. 501 dated May 3, 2017.

### BACKGROUND

SJWC filed Advice Letter (AL) No. 501 as a Tier 2 filing dependent on Water Division's disposition before becoming effective. Advice Letter No. 501 was filed in accordance with General Order (G.O.) No. 96-B and pursuant to the authority established by the Commission in Decision No. (D.) 16-12-026, issued on December 9, 2016 as corrected by D.17-04-002 on April 6, 2017 for the inadvertent use of word "revenue" rather than "sales" in describing Sales Reconciliation Mechanism (SRM).

SJWC filed AL 501 on January 9, 2017, as a Tier 2 advice letter requesting authorization, pursuant to the Commission's Decision ("D.") 16-12-026, Ordering Paragraph 3, to

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implement a Sales Reconciliation Mechanism ("SRM") to amend water sales forecast authorized in its last General Rate Case ("GRC") based on recorded consumption for the period October 2015 through September 2016. AL 501 requested that the submitted rate changes become effective March 15, 2017.

Water Division suspended AL 501 prior to its effective date, stating that the AL was not in compliance with a Commission decision but also that "D.16-12-026 has to be modified." On April 6, 2017, the Commission adopted D.17-04-002, correcting errors in D.16-12-026. The Commission noted in D.17-04-002 that Water Division's review of AL 501 had identified an error in D.16-12-026 in its description of the SRM by the use of the word "revenue" rather than "sales." The April decision replaced references to "revenues" in the context of the SRM with references to "sales" at several points in the text and also in Ordering Paragraph 3. On May 3, 2017, Water Division rejected AL 501, based on the Commission's authorization in D.16-12-026 for water utilities to request SRM through an advice letter filing "during declared drought years in their current GRC cycle." (D.16-12-026 at p.34). SJWC's proposed SRM for 2017 is for a non-drought year.

## NOTICE AND PROTESTS

SJWC mailed a copy of AL 501 to its advice letter service list. A public notice of the rate increase request was also mailed to all customers in compliance with General Order 96-B, Water Industry Rule 3.1 and General Rule 4.2. 548 protests or comments were received as of May 1, 2017 requesting the advice letter be denied primarily because it was unjust, unreasonable, or discriminatory. No protest was received from the Office of Ratepayer Advocates (ORA).

## REQUEST FOR REVIEW

By letter, submitted in accordance with Section 7.7.1 of G.O.96-B, SJWC requests Commission review of Water Division's disposition of AL 501. SJWC sets forth the specific grounds on which it contends that Water Division's action is unlawful and erroneous as summarized below.

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1. Water Division engaged in an unlawful discretionary review of AL 501. To provide such a review, Water Division should have prepared resolution for the Commission's consideration.
2. Water Division fails to apply the clear wording of D.16-12-026, Ordering Paragraph 3, which unambiguously authorizes SJWC to request a SRM by Tier 2 advice letter under the circumstances on which SJWC's request was based.
3. Water Division erroneously relies on the text of D.16-12-026, which is completely consistent with Ordering Paragraph 3, to reach a conclusion inconsistent with the clear wording of that ordering paragraph.
4. Water Division fails to consider the Commission's policy discussion in D.16-12-026, which supports authorization of an SRM to mitigate a mismatch between authorized and actual sales during a drought year regardless of whether the drought has ended.
5. Water Division fails to consider the various state policies and initiatives intended to make water conservation a California way of life, or the complementary local conservation requirements, which can be expected to prolong the mismatch between SJWC's authorized and actual sales absent allowance of an SRM.

## DISCUSSION

Water Division's rejection AL 501 was appropriate and this Resolution affirms Water Division's disposition as both procedurally and substantively correct. Water Division correctly processed AL 501, filed as a Tier 2 filing, pursuant to Ordering Paragraph No. 3 in D.16-12-026, as corrected by Ordering Paragraph No. 1 in D. 17-04-002. G.O. 96-B, Section 7.7.1, provides for the ability of a utility to seek Commission review of industry divisions' dispositions. SJWC availed itself of the authorized procedures to seek Commission review through a resolution. SJWC's procedural argument is rejected as the Company's due process rights were not abridged. The Commission's review of AL 501 that SJWC sought has been obtained using the Commission's established procedures as outlined in G.O. 96-B.

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Water Division rejected AL No. 501 based on Governor Brown's declaration ending the drought emergency in most of California by Executive Order B-40-17 issued on April 7, 2017. Ordering Paragraph No. 3 of D. 16-12-026, as corrected by Ordering Paragraph 1 of D. 17-04-002, authorizes Class A and B utilities to file for an SRM adjustment by Tier 2 advice letter "in light of the drought and circumstances faced in their district(s)." The discussion in D. 16-12-026 confirms that the SRM advice letter procedure was intended for limited circumstances "during declared drought years." (D.16-12-016 at p. 34). Thus, a plain reading of D.16-12-026 as corrected by D. 17-04-002 makes it clear that a declared drought must exist in order to request an SRM through an advice letter filing. While AL No. 501 was filed when a drought existed, the drought was declared over before the advice letter was acted upon. We understand that the Santa Clara Water District continues to call for *voluntary* 20% water conservation. We do not, however, believe that this call for voluntary conservation meets either the intent or plain language contained in D.16-12-026 which specifically requires that there exist a declared drought. The current adopted sales from SJWC's most recent general rate case decision, D.16-06-004, is the sales forecast proposed by SJWC during a period where 20% *mandatory rationing* by the Santa Clara Water District was in effect.

Furthermore, earlier this year SJWC requested authority in Advice Letter No. 505 to suspend its Schedule 14.1's Drought Allocations and Drought Surcharges effective February 1, 2017 in response to this winter's above average rainfall and local water storage conditions. Hence, SJWC neither has the drought conditions, nor the need to implement drought allocations that would require an SRM adjustment for 2017.

SJWC's argument that Water Division's rejection of AL 501 is at odds with various state policies and initiatives on water conservation is baseless. The Commission has a long history in authorizing various conservation measures and programs; including mandating Tariff Rule 14.1 specifying conservation policies and rules for retail customers and enactment of conservation rate design policies dating back almost a decade to incentivize customers to conserve in their use of water. All conservation measures and programs existed at the time SJWC's proposed water sales forecast was adopted by the Commission. Rejection of AL 501 will do nothing to alter the existing conservation efforts.

Finally, SJWC is scheduled to file its next GRC application in January 2018. Water Division believes the appropriate place to consider SRM in the absence of a drought should be during the next GRC application as provided for in D. 16-12-026, Ordering Paragraph No. 4. We concur.

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## COMMENTS

Public Utilities Code Section 311(g) (1) generally requires that resolutions must be served on all parties and be subject to at least 30 days public review and comment prior to a vote of the Commission. On August 25, 2017, this Resolution was mailed for 30-day public review and comment to the utility, protestants, and to the parties on the service list for AL 501.

## SAFETY CONSIDERATIONS

The implementation of SRM during drought years would be appropriate due to mandatory reduction in water usage which allows the utility to *safely* operate and maintain its water distribution system for the benefit of its customers, employees, and members of the general public. However in absence of drought SJWC's existing authorized sales enacted during a period of mandatory rationing should allow the utility the necessary revenues to safely operate and maintain its water distribution system.

## FINDINGS AND CONCLUSIONS

1. On January 9, 2017, San Jose Water Company filed Advice Letter (AL) 501
2. In AL 501, SJWC seeks authorization to implement a SRM to conform water forecasts authorized in last GRC to recorded consumption for the period October 2015 through September 2016.
3. On February 8, 2017, Water Division suspended AL 501, prior to its effective date because D. 16-12-026 had to be modified.
4. On February 2, 2017, San Jose Water Company timely filed a response to 48 customer protests to AL 501.
5. On April 6, 2017, the Commission adopted D.17-04-002, correcting errors in D.16-12-026 for the inadvertent use of word "revenue" rather than "sales" in describing SRM.

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6. In D.16-12-026, the Commission provided for an advice letter procedure for requests to implement an SRM during declared drought years. Otherwise, requests to implement an SRM should be sought in a utility's general rate case.
7. On April 7, 2017, Governor Brown declared an end to the drought emergency in most of California by Executive Order B-40-17.
8. San Jose Water Company, a water retailer in Santa Clara County, purchases water from Santa Clara Valley Water District. Santa Clara Valley Water District currently requests a voluntary 20% conservation instead of the 20% mandatory rationing that was in place when current authorized sales were adopted.
9. On January 27, 2017 San Jose Water Company requested authority to suspend its Schedule 14.1's Drought Allocations and Drought Surcharges by AL 505 effective February 1, 2017.
10. On May 3, 2017 Water Division correctly rejected AL 501 given Governor Brown's Executive Order B-40-17 declaring an end of the drought in California.
11. On May 10, 2017 SJWC requested for Commission review of Water Division's rejection of its Advice Letter No 501.
12. SJWC is scheduled to file its next GRC application in January 2018. The appropriate place to consider SRM in absence of a drought should be during the next GRC application as provided for in D.16-12-026, Ordering Paragraph No.4.

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### THEREFORE, IT IS ORDERED THAT:

1. Water Division's rejection of San Jose Water Company's Advice Letter No. 501 is affirmed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on September 28, 2017; the following Commissioners voting favorably thereon:

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TIMOTHY J. SULLIVAN  
Executive Director

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## CERTIFICATE OF SERVICE

I certify that I have by either electronic mail or postal mail, this day, served a true copy of Proposed Resolution No. W-5150 on all parties in these filings or their attorneys as shown on the attached lists.

Dated August 25, 2017 at San Francisco, California.

/s/ JENNIFER PEREZ

Jennifer Perez

Parties should notify the Division of Water and Audits, Third Floor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on which your name appears.

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## SAN JOSE WATER COMPANY ADVICE LETTER NO. 501 SERVICE LIST

Richard Smith  
[Richard.Smith@cpuc.ca.gov](mailto:Richard.Smith@cpuc.ca.gov)

Richard Rauschmeier  
[Richard.Rauschmeier@cpuc.ca.gov](mailto:Richard.Rauschmeier@cpuc.ca.gov)

Lisa Bilir  
[Lisa.Bilir@cpuc.ca.gov](mailto:Lisa.Bilir@cpuc.ca.gov)

Office of Ratepayer Advocates  
[ORA@cpuc.ca.gov](mailto:ORA@cpuc.ca.gov)

John B. Tang  
[john.tang@sjwater.com](mailto:john.tang@sjwater.com)

Martin Mattes  
Attorney for San Jose Water Company  
Nossaman LLP  
[mmattes@nossaman.com](mailto:mmattes@nossaman.com)

Protestants to Advice Letter 501